No. 14540

United States
Court of Appeals
for the Ninth Circuit

BOEING AIRPLANE COMPANY, a corporation,
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

Transcript of Record

In Two Volumes

VOLUME I.

(Pages 1 to 262, inclusive)

Petition for Review and Petition to Enforce Order of the National Labor Relations Board

Phillips & Van Orden Co., 870 Brannan Street, San Francisco, California—1-6-55

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

Transcript of Proceedings—(Continued)

Witnesses:

GENERAL COUNSEL'S EXHIBIT No. 1-A

United States of America
National Labor Relations Board

CHARGE AGAINST EMPLOYER

* * * * *

Case No. 19-CA-806. Date Filed 4-20-53. Compliance Status Checked by 1-31-54—mm.

1. Employer against whom charge is brought: Boeing Airplane Company, East Marginal Way, Seattle, Washington.

Number of workers employed: 30,000.

Nature of employer's business: Aircraft Industry.

The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8 (a), subsections (1) and (3) and (5) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the act.

2. Basis of the Charge:

Since on or about July 1, 1952, it, through its officers, agents, and supervisory employees, has refused to bargain in good faith with Seattle Professional Engineering Employees Association which at all times has represented a majority of the Company's professional engineering employees and in an appropriate unit, and since that date has refused to bargain in good faith and does now refuse to bargain collectively in good faith with said labor organization and in violation of Section 8 (a) (5) of said Act.

That on or about Jan. 27th, '53 said Company terminated one Charles Robert Pearson, engineer, because of his membership in and activities on behalf of Seattle Professional Engineering Employees Association, and subsequently while re-employing him, required him to hire in as a new employee with loss of all rights and privileges inhering in prior employment, in violation of Section 8 (a) (3) of said Act.

That by the acts and statements set forth in the paragraphs above and by other acts and statements, it has interfered with, restrained, and coerced its employees in the exercise of their rights under Section 7 of said Act and in violation of Section 8 (a) (1) of said Act.

3. Full name of labor organization, including local name and number, or person filing Charge: Seattle Professional Engineering Employees Association.

4. Address: 3121 Arcade Building, Seattle, Washington. Telephone No. SE 4925.

* * * * *

7. Declaration: I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

/s/ By M. W. McCUSKER,
Business Representative

Date: April 20, 1953.

Affidavit of Service by Mail attached.

GENERAL COUNSEL'S EXHIBIT No. 1-C

United States of America
National Labor Relations Board

CHARGE AGAINST EMPLOYER

* * * * *

Case No. 19-CA-806. Date Filed 4-20-53. Amended 5-19-53. Compliance Status Checked by 1-31-54—mm.

1. Employer against whom charge is brought: Boeing Airplane Company, East Marginal Way, Seattle, Washington.

Number of workers employed: 30,000.

Nature of employer's business: Airframe manufacturing.

The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8 (a), subsections (1) and (3) and (5) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the act.

2. Basis of the Charge:

Since on or about July 1, 1952, Boeing Airplane Company, through its officers, agents, and supervisory employees, has refused to bargain in good faith with the Seattle Professional Engineering Employees Association (SPEEA) which at all times has represented a majority of the Company's professional engineering employees and in an ap-

propriate unit, and since that date has refused to bargain in good faith and does now refuse to bargain collectively in good faith with said labor organization and in violation of Section 8 (a) (5) of said Act.

That on or about January 27th, 1953 said Company terminated one Charles Robert Pearson, Engineering Designer "A", because of his membership in and activities on behalf of SPEEA, and subsequently rehired him as a new employee (March 17th, 1953), in violation of Section 8 (a) (3) of said Act.

That by the acts and statements set forth in the paragraphs above and by other acts and statements, it has interfered with, restrained, and coerced its employees in the exercise of their rights under Section 7 of said Act, and in violation of Section 8 (a) (1) of said Act.

3. Full name of labor organization, including local name and number, or person filing charge: Seattle Professional Engineering Employees Association.

4. Address: 3121 Arcade Building, Seattle 1, Washington. Telephone No. SE 4925.

5. Full name of national or international labor organization of which it is an affiliate or constituent unit: Engineers & Scientists of America.

6. Address of national or international, if any: 341 East Lake Street, Minneapolis 8, Minnesota.

7. Declaration: I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

/s/ By M. W. McCUSKER,
Business Representative

Date: 5-14-53.

Affidavit of Service by Mail attached.

GENERAL COUNSEL'S EXHIBIT No. 1-E

United States of America
Before the National Labor Relations Board
Nineteenth Region

Case No. 19-CA-806

In the Matter of BOEING AIRPLANE COMPANY and SEATTLE PROFESSIONAL ENGINEERING EMPLOYEES ASSOCIATION

NOTICE OF HEARING

Please Take Notice that on the 23rd day of June, 1953, at 10:00 a.m., in Room 407, U. S. Court House Building, Fifth and Spring, Seattle, Washington, a hearing will be conducted before a duly designated Trial Examiner of the National Labor Relations Board on the allegations set forth in the Complaint attached hereto, at which time and place you will have the right to appear in person, or otherwise, and give testimony.

A copy of the Charge upon which the Complaint is based is attached hereto.

You are further notified that, pursuant to section 102.20 of the Board's Rules and Regulations, you shall file with the undersigned Regional Director, acting in this matter as agent of the National Labor Relations Board, an original and four copies of a verified answer to the said Complaint within ten (10) days from the service thereof and that unless you do so all of the allegations in the Complaint shall be deemed to be admitted to be true and may be so found by the Board.

In Witness Whereof the General Counsel of the National Labor Relations Board, on behalf of the Board, has caused this Notice of Hearing to be signed by the Regional Director for the Nineteenth Region on this 3rd day of June, 1953.

/s/ THOMAS P. GRAHAM, JR.,
Regional Director, National Labor Relations Board,
407 U. S. Court House, Seattle 4, Washington.

GENERAL COUNSEL'S EXHIBIT No. 1-F

[Title of Board and Cause.]

COMPLAINT

It having been charged by Seattle Professional Engineering Employees Association that Boeing Airplane Company, at Seattle, Washington, has engaged in and is now engaging in certain unfair labor practices affecting commerce as set forth in the Labor-Management Relations Act of 1947, 61 Stat. 136, herein called the Act, the General Counsel

of the National Labor Relations Board, on behalf of said Board, by the Regional Director for the Nineteenth Region, acting pursuant to the Board's Rules and Regulations, Series 6, as amended, Section 102.15, hereby issues this Complaint and alleges as follows:

I.

Boeing Airplane Company, hereinafter called the Respondent, is a Delaware corporation having its principal office in Seattle, Washington. The Respondent is engaged in the manufacture of aircraft and aircraft parts, operating plants at Wichita, Kansas, and at Seattle and Renton, Washington.

II.

The Respondent, in the course and conduct of its business and at all times herein alleged, continuously has purchased for use at its Seattle and Renton plants, materials, supplies and equipment originating at points outside the State of Washington, valued in excess of $1,000,000 annually, and continuously has manufactured at said plants and sold to agencies of the United States Government and to operators of commercial airlines, aircraft and aircraft parts valued in excess of $1,000,000 annually.

III.

Seattle Professional Engineering Employees Association, herein called SPEEA, is and, at all times hereinafter mentioned, has been a labor organization within the meaning of Section 2, subsection (5) of the Act.

IV.

On or about August 31, 1951, the Respondent and SPEEA entered into a collective bargaining agreement pursuant to which SPEEA was recognized by the Respondent as the exclusive collective bargaining representative of its employees in the following unit:

All employees in the Seattle plants of the Respondent in the following classifications:

Design Specialist "A"
Preliminary Design Engineer "A"
Research Specialist "A"
Aerodynamics Engineer "A"
Design Specialist "B"
Research Specialist "B"
Aerodynamics Engineer "B"
Engineering Designer "A"
Flight Test Engineer "A"
Research Engineer "A"
Structures Engineer "A"
Field Service Representative "A"
Production Design Engineer "A"
Senior Tool Engineer "A"
Coordinator "A"
Research Engineer "B"
Aerodynamicist "A"
Contract Specifications Engr. "A"
Engineering Liaison Man "A"
Flight Test Analyst "A"
Salvage Engineer "A"
Service Engineer "A"
Stress Analyst "A"

Weight Control Engineer "A"
Engineering Designer "B"
Quality Engineer
Associate Research Engineer "A"
Senior Tool Engineer "B"
Production Design Engineer "B"
Wind Tunnel Test Engineer "A"
Aerodynamicist "B"
Field Service Representative "B"
Stress Analyst "B"
Contract Specifications Engr. "B"
Junior Engineer "A"
Quality Analyst "A"
Tool Engineer "A"
Engineering Liaison Man "B"
Flight Test Analyst "B"
Associate Research Engineer "B"
Junior Engineer "B"
Quality Analyst "B"
Tool Engineer "B"

V.

The unit as described in paragraph IV, above, is now and, at all times hereinafter alleged, was an appropriate unit within the meaning of Section 9 (b) of the Act.

VI.

SPEEA is now and, at all times since at least August 31, 1951, has been the collective bargaining representative of a majority of the Respondent's employees in the unit described in paragraph IV, above, and by virtue of Section 9 (a) of the Act,

has been and now is the exclusive representative of all employees of the Respondent in said unit for the purpose of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

VII.

On or about April 7, 1952, pursuant to notice given by SPEEA under the terms of the contract referred to in paragraph IV, above, the Respondent and SPEEA entered into negotiations concerning the terms of a new agreement. Negotiating meetings were held at various times thereafter throughout the year 1952, and into the year 1953, with the Respondent and SPEEA unable to reach mutual agreement on the terms of a new contract.

VIII.

On or about January 27, 1953, at a time when no agreement had as yet been reached with SPEEA, the Respondent discharged its employee, Charles Robert Pearson, because of his membership in and activities on behalf of SPEEA and because he had engaged in concerted activities within the meaning of Section 7 of the Act, viz.: Beginning on or about January 2, 1953, he acted as chairman of a committee formed by SPEEA to plan and operate a Manpower Availability Conference which had as one of its purposes, facilitating SPEEA's members in obtaining employment as engineers with companies other than the Respondent.

IX.

On or about January 27, 1953, Respondent refused and failed to bargain in good faith with SPEEA as the representative of its employees in the unit described above in paragraph IV by the discharge of Charles Robert Pearson, as set forth in paragraph VIII, above, for the purpose of restraining the Union's economic action undertaken to break the bargaining impasse then in existence; and by offering re-employment to said Charles Robert Pearson, on or about March 2, 1953, by a letter bearing that date, affirming and adhering to the course of conduct set forth above and thereby attempting to render ineffectual any further economic action of that nature that might be undertaken by the Union in the course of bargaining.

X.

On the date of his discharge, referred to in paragraph VIII, above, Charles Robert Pearson requested the Respondent to permit representatives of SPEEA to be present at the conference which immediately preceded his discharge, and the Respondent refused his request, although the Respondent's principal purpose in conducting the conference was to inquire into Pearson's activities in connection with the Manpower Availability Conference referred to in paragraph VIII, above.

XI.

On or about March 12, 1953, the Respondent unilaterally put into effect wage increases for the

employees in the appropriate unit referred to in paragraph IV, above.

XII.

By all the acts of the Respondent, as set forth and described in paragraphs VIII, IX, X, and XI, above, and by each of said acts, the Respondent interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act, and by all of said acts, and by each of them, the Respondent has engaged in, and is now engaging in, unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

XIII.

By the discharge of Charles Robert Pearson, as set forth and described in paragraph VIII, above, the Respondent discriminated and now is discriminating against its employees in regard to hire or tenure of employment, and thus discouraged, and now is discouraging, membership in SPEEA, and thereby engaged in, and is thereby engaging in, unfair labor practices within the meaning of Section 8 (a) (3) of the Act.

XIV.

By the discharge of Charles Robert Pearson, as set forth and described in paragraph VIII, above, because of his participation in action designed to strengthen SPEEA's position in the bargaining negotiations with the Respondent, as set forth in paragraph IX, above; by the refusal to permit Pearson to be represented by representatives of

SPEEA in the conference immediately preceding his discharge, as set forth and described in paragraph X, above; and by unilaterally putting into effect wage increases at a time subsequent to Pearson's discharge and before such discharge was remedied, as set forth and described in paragraph XI, above, the Respondent has refused to bargain with SPEEA and thereby has engaged in and is now engaging in unfair labor practices within the meaning of Section 8 (a) (5) of the Act.

XV.

The activities of the Respondent, as set forth and described in paragraphs VIII, IX, X, and XI, above, occurring in connection with the operations of the Respondent, as described in paragraphs I and II, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several states of the United States, and have led to and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

XVI.

The aforesaid acts of the Respondent, as set forth and described in paragraphs VIII, IX, X, and XI, above, constitute unfair labor practices affecting commerce within the meaning of Section 8 (a) (1), (3), and (5), and Section 2 (6) and (7) of the Act.

Wherefore, the General Counsel of the National Labor Relations Board, on behalf of the Board, on this 3rd day of June, 1953, issues this Complaint

against Boeing Airplane Company, the Respondent herein.

/s/ THOMAS P. GRAHAM, JR.,
Regional Director, National Labor Relations Board,
Region 19, Seattle, Washington.

Affidavit of Service by Mail attached.

GENERAL COUNSEL'S EXHIBIT No. 1-H

[Title of Board and Cause.]

ANSWER OF RESPONDENT BOEING AIRPLANE COMPANY

Respondent hereby answers the complaint, hereby adopting the abbreviated titles used therein, and alleges as follows:

I.

The allegations contained in paragraph I of the complaint are admitted.

II.

The allegations contained in paragraph II of the complaint are admitted.

III.

The allegations contained in paragraph III of the complaint are admitted.

IV.

The allegations contained in paragraph IV of the complaint are admitted except as to the inclusion by agreement of the classifications Facilities Engineer "A" and Facilities Engineer "B" in the definition of the unit represented by SPEEA, it be-

ing respondent's information and belief that SPEEA received less than a majority in a representation election held on September 24, 1952, in Case No. 19-RC-1175, to determine whether the unit was to be expanded to include such classifications, and that such classifications were determined by the Board in that case to be not within such unit.

V.

The allegations contained in paragraph V of the complaint are admitted (subject to the allegations in paragraph IV as to the classifications Facilities Engineer "A" and Facilities Engineer "B").

VI.

The allegations contained in paragraph VI of the complaint are admitted (subject to the allegations in paragraph IV as to the classifications Facilities Engineer "A" and Facilities Engineer "B"), and respondent further alleges that at all times since about May 8, 1946, pursuant to a consent election on or about that date, SPEEA has represented substantially the same unit, except for certain smaller groups that were added to the unit subsequent to that date.

VII.

The allegations contained in paragraph VII of the complaint are admitted.

VIII.

Answering paragraph VIII of the complaint:

Respondent admits that it discharged its employee, Charles Robert Pearson, on or about January 27, 1953, at a time when no new agreement had

as yet been reached with SPEEA. Respondent further admits and alleges that Pearson was discharged because of his activities in connection with the "Manpower Availability Conference" to which reference is made in said paragraph; is without knowledge as to whether, beginning on or about January 2, 1953, Pearson acted as chairman of a committee formed by SPEEA to plan and operate such Manpower Availability Conference; admits that one of the purposes of such Manpower Availability Conference was to facilitate SPEEA's members in obtaining employment as engineers with companies other than respondent, but denies all other allegations in such paragraph VIII, and particularly denies that Pearson was discharged because of his membership in SPEEA or because of any identification of such Manpower Availability Conference as an activity of SPEEA.

IX.

Answering paragraph IX of the complaint:

Respondent admits that it offered reemployment to Pearson on or about March 2, 1953, by a letter bearing that date, and alleges that Pearson accepted reemployment with respondent on or about March 17, 1953. Respondent alleges that such reemployment was to Pearson's former position with restoration, as of the date of discharge, of Company Service and other employee benefits incident to Pearson's prior employment by respondent. Respondent is informed that Pearson was employed by SPEEA throughout the period during which he was not in

respondent's employ. Respondent further admits and alleges that in such letter it reaffirmed its position concerning the Manpower Availability Conference. The allegations of paragraph IX of the complaint are otherwise denied.

X.

The allegations contained in paragraph X of the complaint are admitted, except that, as to the references to paragraph VIII of the complaint, such admission is subject to the denials in paragraph VIII hereof. Respondent further alleges that shortly after Pearson's discharge SPEEA requested a conference on the matter of such discharge and pursuant to such request several conferences with SPEEA representatives occurred in which the matter of Pearson's discharge and the respective positions of the parties in respect thereof were fully discussed. Pearson was present at the first of these conferences.

XI.

Answering paragraph XI of the complaint:

Respondent admits that on or about March 12, 1953 it unilaterally put into effect wage increases for the employees in the unit referred to in paragraph IV of the complaint (subject to the allegations in paragraph IV as to the classifications Facilities Engineer "A" and Facilities Engineer "B"), which increases were less than those demanded by SPEEA, after first having discussed such increases with SPEEA and after having given notice thereof to SPEEA.

XII.

The allegations contained in paragraph XII of the complaint are denied.

XIII.

The allegations contained in paragraph XIII of the complaint are denied.

XIV.

The allegations contained in paragraph XIV of the complaint are denied.

XV.

The allegations contained in paragraph XV of the complaint are denied.

XVI.

The allegations contained in paragraph XVI of the complaint are denied.

Further Grounds of Defense

For further grounds of defense, respondent charges that SPEEA, through its officers and agents, has refused to bargain collectively in good faith with respondent, in violation of Section 8(b)(3) of the Act, to the extent that SPEEA organized, promoted and operated the Manpower Availability Conference, to which reference is made in the complaint, and conducted activities relating to such Manpower Availability Conference, as a threat of economic action against and damage to respondent, in pressing the demands of SPEEA in the collective bargaining negotiations between the parties.

Wherefore, respondent requests that the com-

plaint in the above entitled proceedings be dismissed.

BOEING AIRPLANE COMPANY,
a corporation,
/s/ By A. F. LOGAN,
Its Vice President and duly authorized agent.
Respondent. 7755 East Marginal Way, Seattle, Washington.

Duly Verified.

Affidavit of Service by Mail attached.

[Title of Board and Cause.]

ORDER DESIGNATING TRIAL EXAMINER

It Is Hereby Ordered that Maurice M. Miller act as Trial Examiner in the above case and perform all the duties and exercise all the powers granted to trial examiners under the Rules and Regulations of the National Labor Relations Board.

Dated: June 23, 1953.

[Seal] /s/ WILLIAM E. SPENCER,
Associate Chief Trial Examiner

[Title of Board and Cause.]

ORDER

After a hearing held in the above-entitled matter at Seattle, Washington, counsel for the Respondent presented a motion that the transcript of the testi-

mony in the case be corrected in certain respects to eliminate typographical and other errors. The General Counsel's representative has filed no objections to the Motion. An independent examination of the transcript and the suggested corrections establishes that correction of the transcript in the respects indicated would be appropriate.[1]

It is Ordered, therefore, that the transcript be, and it hereby is, corrected in accordance with the list attached to this order.

Dated: November 10, 1953.

/s/ MAURICE M. MILLER,
Trial Examiner

* * * * *

[Title of Board and Cause.]

ORDER TRANSFERRING CASE TO THE NATIONAL LABOR RELATIONS BOARD

A hearing in the above-entitled case having been held before a duly designated Trial Examiner and the Intermediate Report and Recommended Order of the said Trial Examiner, a copy of which is an-

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[1] At five points in the list of corrections attached, the Trial Examiner, on the basis of his independent examination of the record, has determined that correction of the record would require an entry different from that suggested by the Respondent's counsel. Changes in the transcript ordered on the basis of the Trial Examiner's examination will be marked with an asterisk.

nexed hereto, having been filed with the Board in Washington, D. C.

It Is Hereby Ordered, pursuant to Section 102.45 of National Labor Relations Board Rules and Regulations that the above-entitled matter be, and it hereby is, transferred to and continued before the Board.

Dated, Washington, D. C., December 28, 1953.

By direction of the Board:

/s/ FRANK M. KLEILER,
Executive Secretary

* * * * *

[Title of Board and Cause.]

INTERMEDIATE REPORT AND RECOMMENDED ORDER

Messrs. Paul E. Weil and Robert Tillman, for the General Counsel.

Messrs. DeForest Perkins and William M. Holman, of Holman, Mickelwait, Marion, Black and Perkins, of Seattle, Wash., for the Respondent.

Mr. Jack R. Cluck, of Seattle, Wash., for the Union.

Before: Maurice M. Miller, Trial Examiner.

Statement of the Case

After an investigation of a charge and amended charge duly filed by the Seattle Professional Engi-

neering Employees Association, designated in this Intermediate Report as SPEEA or alternatively as the Union, the General Counsel of the National Labor Relations Board, in the name of the Board, caused the Regional Director of its Nineteenth Region at Seattle, Washington, to issue a complaint on June 3, 1953, in which Boeing Airplane Company, Seattle Division, was named as a respondent employer. The complaint alleged that the Respondent engaged and has continued to engage in unfair labor practices affecting commerce, within the meanin of Section 8(a)(1), (3) and (5) and Section 2(6) and (7) of the National Labor Relations Act, 49 Stat. 449, as amended and reenacted by the Labor Management Relations Act, 1947, 61 Stat. 136, designated herein as the Act. Copies of the charge, the amended charge, the complaint, and a notice of hearing were duly served upon the Respondent and the Union.

With respect to the unfair labor practices the complaint, as amended in certain minor respects, alleged in substance: (1) that the Union is now, and has been since August 31, 1951, at least, recognized by the Respondent as the exclusive collective bargaining representative of a majority of its employees in a defined unit appropriate for the purposes of a collective bargain; (2) that the Respondent and the Union on or about April 7, 1952—pursuant to a notice given by the Union under the terms of a contract then current—initiated negotiations for a new agreement; (3) that the Respondent and the Union have been unable to reach

agreement in the negotiations conducted thereafter; (4) that the Respondent on or about January 27, 1953—during the pendency of the negotiations with the Union—discharged Charles Robert Pearson because of his Union membership and activities and because of his participation in certain specified concerted activities calculated to break the impasse in the contractual negotiations; (5) that the Respondent—by its discharge of Pearson because of his participation in a concerted activity designed to strengthen the Union's position in contractual negotiations, its refusal to permit Pearson to be represented by Union spokesmen in a conference immediately prior to his discharge, and its affirmation of determined opposition to the particular type of concerted activity in which Pearson had engaged at the Union's direction—failed and refused to bargain in good faith with the Union as the representative of its employees; (6) that the Respondent, on or about March 12, 1953, unilaterally made a wage increase effective for the employees in the unit for which the Union is the recognized representative, and thereby additionally failed and refused to bargain with the Union in good faith; and (7) that the Respondent's course of conduct, as described, involved unfair labor practices affecting commerce within the meaning of the Act as amended.

The Respondent's answer, duly filed, admitted the jurisdictional allegations of the complaint and the status of the Union as a labor organization, but denied the commission of any unfair labor prac-

tices. Specifically, the Respondent admitted the appropriateness of the unit, described in the amended complaint, for the purposes of a collective bargain, and it admitted recognition of the Union at all times since May 8, 1946, approximately, as the exclusive representative of employees in a unit substantially identical with that described in the complaint. The firm's answer also admitted the execution of a contract with the Union in 1951 and its participation in negotiations for a new agreement initiated in April of 1952 by that organization. It admitted the failure of the parties to reach an agreement as of the date of the complaint. The Respondent, in its answer, admitted certain factual allegations with respect to Pearson's discharge, but denied particularly, that the discharge was effected because of Pearson's membership in the Union or because of any identification of the activities in which he engaged as Union activities. The Respondent denied that its course of conduct with respect to the discharge and subsequent reemployment of Pearson involved a refusal to bargain; insofar as the wage increases of March 12, 1953, are concerned, the answer admitted unilateral effectuation of the increases, but asserted that they were less than the increases demanded by the Union, and that they were made effective only after proper notice and discussion with the labor organization.

As a further ground of defense, the Respondent alleged that the Union had refused to bargain collectively in good faith with the Respondent, in violation of Section 8 (b) (3) of the statute, in that it

had organized, promoted, and operated a "Manpower Availability Conference" as described in the complaint, and engaged in certain activities related to such a conference as a threat of economic action against the Respondent, in pressing its collective bargaining demands.

In accordance with the notice already cited, a hearing was held before me, as a duly designated trial examiner, at Seattle, Washington, between June 23 and June 25, 1953, both dates inclusive. The General Counsel, the Respondent, and the Union were represented by attorneys. All the parties were afforded a full opportunity to participate, to be heard, and to introduce evidence pertinent to the issues.

At the outset of the case, the General Counsel moved to amend the complaint in certain minor particulars; these motions were granted without objection. Certain rulings with respect to the admissibility of evidence were announced at the hearing; these rulings are hereby affirmed. At the close of the testimony, also, each of the parties argued orally; their argument has been embodied in the stenographic transcript. Pursuant to appropriate notice given at the hearing, briefs have been received from the Respondent and the charging labor organization. No brief has been received, however, from the General Counsel's representative.

Findings of Fact

Upon the entire record in the case, and upon my

observation of the witnesses, I make the following findings of fact.

I. The Business of the Respondent.

The Respondent is a Delaware corporation, which maintains its principal office at Seattle, Washington. The firm operates plants in Wichita, Kansas, and in Seattle and Renton, Washington, at which it is engaged in the manufacture of aircraft and aircraft parts. In the course and conduct of its business, and at all material times, the Respondent has purchased for use in its Seattle and Renton plants, materials, supplies, and equipment originating outside of the State of Washington valued in excess of $1,000,000 annually; it manufactures and sells to agencies of the United States government and to operators of commercial airlines, aircraft and aircraft parts valued in excess of $1,000,000 per year.

The Respondent makes no contention that it is not involved in commerce and business activities which affect commerce, within the meaning of those terms as defined in the Act. See Boeing Airplane Company, 103 NLRB No. 115, 31 LRRM 1610. I find that it is engaged in such activities, and that assertion of the Board's jurisdiction would effectuate the objectives of the statute.

II. The Labor Organization

The Seattle Professional Engineering Employees Association is, and at all material times has been, a labor organization within the meaning of Section

2 (5) of the Act, which admits employees of the Respondent to membership.

III. The Unfair Labor Practices

The Facts

A. Preliminary Statement.

All of the relevant evidence with respect to the issue involved in this case is embodied in documentary material or substantially undisputed testimony. I am entirely satisfied that any conflicts revealed in the record are due to differences of recollection. And since none of them appear to involve significant factual questions, I have undertaken to present the relevant data in narrative form without reference to the testimony of any particular witness—except to the extent that such references may be necessary, if at all, in connection with my narrative summation.

B. The Contractual Negotiations.

In 1946, after a consent election, the Union was "certified" as the exclusive representative of certain employees in the Respondent's Engineering Division. Since its certification, the Union has executed several contracts; there have been no work stoppages incidental to any of the negotiations. Approximately 3500 employees were at work for the Respondent, throughout the period with which this case is concerned, within the SPEEA unit.

On April 2, 1952, in a letter to the Respondent, SPEEA notified the latter of its desire to amend the 1951 agreement between the parties, by the negotiation of certain changes in relation to wages,

salaries and overtime compensation. In its letter, SPEEA described the changes as:

> * * * changes which we feel are necessary to improve the morale of the Engineering Division and to establish the engineer in his proper place in relation to the rest of society with regard to his salary and working conditions.

The letter indicated that other subjects might be brought up during the course of negotiations, however.

On the following day, A. F. Logan, Vice President in charge of Industrial Relations for the Respondent, at its Seattle Division, acknowledged the receipt of SPEEA's letter by the firm and indicated that its representatives would be available to meet the Union's committee on April 7, 1952.

A number of meetings were held thereafter. SPEEA appears to have requested wage and salary increases for various classifications in the Engineering Division which ranged from 28 percent to 36 percent of the then current wage and salary levels. On June 27, 1952, in a letter to E. M. Gardiner, the Chairman of SPEEA's Executive Committee, Vice President Logan reported that the Respondent would be willing to increase the "base salary rate" of each employee covered by the firm's agreement with the Union by 6 percent, and to increase all minimum and maximum rates established by the agreement in the same percentage. Vice President Logan also presented a company offer with respect to overtime compensation. The Respondent offered to make each of these suggested adjustments effec-

tive as of July 1, 1952, if the Union accepted its offer within 60 days. In a reply letter, dated on July 10, 1952, SPEEA rejected the offer. Further negotiations revealed that an impasse had been reached.

Thereafter, in August and September of 1952, the parties met on several occasions with a representative of the Federal Mediation and Conciliation Service. At the suggestion of the Federal Conciliator, apparently, SPEEA representatives raised for consideration a number of additional matters with respect to which they wished to negotiate contractual changes. On August 25, 1952, in a letter to Vice President Logan, these proposals were formalized.

> (A detailed analysis of the Union's "Second Contract Agreement Proposal" would not appear to be required, except to note that the Union modified its request for a base pay raise and called for a 13.5% increase for all of the employees in SPEEA classifications, retroactive to the first of July. The other subjects covered in the proposal involved such matters as overtime, merit raises, incentive pay, pensions, installation of an engineering efficiency system, removal of time clocks, salary data, sick leave, and company recognition of the Union's "area representative" system—which appears to be roughly comparable to the shop steward arrangement common in conventional labor organizations).

The revised proposals were described by the Union's

executive committee as "equitable and practical" in view of the discussions held with Company representatives since the inception of negotiations.

In the meantime on or about August 21, 1952, pursuant to notice previously given, the amended 1951 agreement between the Respondent and the Union had been automatically terminated. Each of the parties to the agreement, however, in an exchange of correspondence, had declared its readiness to continue negotiations for a new agreement. Such negotiations, as we shall see, did in fact continue—and the conditions established under the expired contract have been maintained, with one exception to be noted, up to date.

In the course of the conferences, previously noted, before the Federal Conciliator, the impasse in negotiations seems to have disappeared. In any event, the Respondent's first formal reply to SPEEA's "Second Contract Agreement Proposal," as embodied in a letter dated on September 3, 1952, presented a modified proposal with respect to sick leave. Vice President Logan, however, closed the letter with the observation that:

> In all other particulars, a review of the whole situation as it is apparent to us, including recent developments in negotiation, has not led us further to modify our previous offer.

The parties last met with a Federal Conciliator on September 11, 1952; thereafter, apparently in the hope and expectation that the impasse had been broken, the parties dispensed with the Conciliator's services and resumed direct negotiations.

C. The Manpower Availability Conference.

During the negotiations for the 1951 agreement previously noted, at a time not set forth specifically in the record, the Executive Committee of the Union appears to have organized an Action Committee, so-called, specifically designated to originate and formulate plans for various types of Union action short of a strike, calculated to focus economic pressures upon the Respondent and thus to strengthen the Union's position in the negotiations. The record shows that this committee suggested several courses of action calculated to bring pressure upon the respondent company; among the suggestions was one that SPEEA organize and conduct a Manpower Availability Conference for the benefit of any Boeing engineers who might wish to seek employment elsewhere.

> (The exact nature and significance of the suggestion with respect to a conference—with which this case is immediately concerned—will be set forth elsewhere in this report).

Since the executive officials of the Union expected that a new agreement with the Respondent would be executed shortly, and since such an agreement later did in fact materialize, the suggestion with respect to a Manpower Availability Conference was never elaborated.

In August of 1952, however, while the negotiations for a new agreement were being held under the guidance of a Federal Conciliator, the Chairman of the Action Committee resubmitted the suggestion, among others, to a meeting of SPEEA area

representatives shortly before a scheduled general membership meeting; thereafter, I find, it was discussed informally by the area representatives and members of the Executive Committee of the organization.

At SPEEA's August membership meeting, the conference was cited in an Action Committee report as one of the several courses of action calculated to focus economic pressure upon the Respondent. A majority of the members at the meeting—which appears to have been held on August 4, 1952—approved the Committee's report and directed the Executive Committee of the organization to publish it for the information of the membership. This was done, and the report appears to have been distributed shortly thereafter. With the approved report on the Manpower Availability Conference, the Executive Committee distributed a ballot calculated to secure an expression from the membership as to its willingness to participate in a conference of the type outlined. The report indicated that it was being submitted to determine whether or not the membership desired to initiate "punitive action" of the type indicated, at the time. In pertinent part, the report read as follows

Introduction

The Manpower Availability Conference is conceived as a "market place" where Engineers who seek more desirable employment can meet with Companies which seek to hire more Engineers. There are three major reasons for sponsoring such a conference; namely, to help those Engineers de-

siring to move to obtain the best competitive offer, to help to discover the true market price for Engineers, and as a punitive action to reduce the Engineering services available to Boeing.

General Plan

First, signatures of Engineers who pledge themselves to attend such a conference will be obtained through the Area Representatives. A few items of personal data, such as years of experience, will also be obtained for submission to the invited Companies to serve as an inducement. Area Representatives will keep this information confidential. If membership response is favorable, a letter will be written and mailed to every Company we know of in the country which employs Engineers. Perhaps ads could be inserted in the "Positions Available" columns of newspapers in a number of leading cities, inviting inquiries of SPEEA. Next, a date would be set for the conference and arrangements made for the interviews with those Companies who accept our invitation. After the conference, each Engineer who was interviewed would be asked to drop a card bearing his present salary and the increase offered into a box. This information would then be summarized and circulated to all Boeing Engineers. A summary of the experience of persons hired by the participating Companies could be made and circulated to all of the other Companies on our mailing list. It is expected that this information would excite the interest of both groups. Another conference could then be called and the procedure repeated. This con-

ference should be sufficiently unusual to be newsworthy and could thus aspire to considerable free publicity. This publicity in turn would have a further punitive action to discourage new hires from coming to Boeing.

A number of questions may arise. First, "What if the Conference doesn't work?" There is little purpose in conjecturing about success of this item. If only ten Engineers pledge to attend or if only one Company accepts our invitation, the conference will obviously fall far short of expectations and might be called off. All we would have lost in that eventuality would be some work and printing cost. We will never know for sure, though, unless we try. As a point of interest, however, several Companies have been sounded out and they all have indicated unofficially that they desire to be included. Second, "Is it ethical?" There is nothing unethical about providing a time and a place for these two groups to get together. After all, it is Boeing policies which provide the impetus for a change, not SPEEA. Anyway, Boeing has set the ethical standard with their Gentlemen's Agreement. Third, "Won't the Gentlemen's Agreement of the Aircraft Industries Association be a hinderance?" Possibly, but we have a method which might get around that for some Engineers, namely, expressing willingness to AIA members to notify Boeing in advance of plans to seek employment elsewhere. At any rate, we might be surprised at the variety of Companies who are sufficiently interested in our qualifications to make attractive offers. Fourth question, "What if the

Company finds out about the Conference?" It would be our intention that they find out well in advance, when some invited Companies send them our letter, if they haven't learned of it sooner by word of mouth * * *

The so-called "Gentlemen's Agreement" of the Aircraft Industries Association, to which reference is made in the above-quoted report, refers to a resolution adopted by the Aircraft Industries Association with respect to the practices of member companies in connection with their engineer recruitment programs. Insofar as it may be material, the "agreement" and the Respondent's interpretation of it will be discussed elsewhere in this report.

Late in September or early in October of 1952 the results of the ballot or "pledge" circulated to the SPEEA membership in connection with the Conference report were announced. There were 871 replies from approximately 2100 members in the Respondent's employ. The replies were distributed as follows:

Pledge	No.	Percentage of Replies
1. I pledge to attend this conference, I desire to change Companies, and I authorize the Executive Committee to notify Boeing of my intention not more than two weeks prior to the conference	10	1.5
2. I pledge to attend this conference and I desire to change Companies, but I desire not to disclose my intention to Boeing	86	9.86
3. I pledge to attend this conference, but do not necessarily desire to change Companies at this time	420	48.28

Pledge	No.	Percentage of Replies
4. I am willing that the conference be conducted, but I will not participate	321	36.82
5. I desire that no conference be conducted	34	3.89

Prior to the receipt of these pledges, the Executive Committee had appointed a special Manpower Availability Conference Committee to develop detailed plans for the indicated conference, and to initiate such a conference if necessary. Charles Robert Pearson, an engineering designer in the Respondent's employ, had been named as committee chairman.

> (For convenience, the Manpower Availability Conference will be designated hereafter in this report as the MAC, and Pearson's committee will be designated as the MAC Committee.)

The executive Committee of the Union requested the MAC Committee to perfect its plans for an MAC, but to undertake no action implementing such plans which might jeopardize current negotiations for a new contract. Some time in September or October of 1952, after the results of the ballot previously noted were tabulated, SPEEA's Executive Committee notified the Respondent of the results at a bargaining conference; the Respondent's representatives were informed however that since the negotiations appeared to be going well, no action with respect to the MAC would be taken by the Union, for at least four weeks.

> (According to Edward M. Gardiner, then Chairman of the Union's Executive Committee,

this information was communicated to the Respondent on or about September 29, 1952.)

Pursuant to the instructions of the Executive Committee the MAC Committee organized a number of sub-committees and proceeded to formulate detailed plans for the conduct of the projected conference. As of October 17, 1952, the sub-committees would appear to have been organized, and their responsibilities assigned.

(Participation in the MAC, as planned, was to be limited to SPEEA members in the Respondent's employ. The Union had some members employed at the Continental Can Company, but they appear to have been employed under a trade agreement still in effect.)

D. Further Contractual Negotiations.

In a letter dated on November 20, 1952, addressed to the Union, the Respondent stated its "ultimate position" with respect to the various issues under negotiation. With respect to "base salary rates and rate ranges" the Respondent reiterated its previous offer of a 6 percent increase across-the-board effective as of July 1, 1952.

(Chairman Gardiner of SPEEA testified, however, that the Respondent, dehors the contract, indicated its intent to initiate a program of merit increases twice a year, instead of only once a year as formerly, and to increase its fund for merit increases from 3 percent to 6 percent of the unit payroll.)

The Company also proposed a revision in the method of computation to be used in the calculation

of hourly rates of pay for scheduled overtime work on the part of employees in the firm's so-called "exempt" classifications, the revision to be effective January 2, 1953.

(Chairman Gardiner, as a witness, characterized this proposal as less favorable than the Respondent's offer with respect to overtime compensation in July of 1952. As of that time, Gardiner reported, the Respondent had offered to pay for overtime work on a revised basis, retroactive to the first of the month; the Respondent's "ultimate position" however, as noted, limited such retroactivity to the 6 percent increase in base salary rates and rate ranges.)

The Respondent concurred in SPEEA's proposal with respect to a sick leave clause, and countered various Union proposals with respect to the improvement of efficiency in the utilization of engineers with a proposal that the firm's job classification structure be revised in certain specified respects.

Except in the particular respects noted, the Respondent proposed execution of a contract which would embody terms and provisions "similar" to those in the previous agreement between the parties.

(The letter in which the Respondent stated its ultimate position also included certain statements and commitments with respect to various issues raised in the Union's second contractual proposal; these covered such matters as merit increases, incentive compensation, pensions, sal-

ary data, and company recognition of the Union's "area representative" system. In the context of the present case, however, none of these issues would appear to be material.)

The Respondent's offer, as described, was subsequently rejected by the Union membership, in a formal referendum. In a letter dated December 20, 1952, Chairman Gardiner formally communicated this information to Vice President Logan; he expressed the "expectation" however that negotiations between the Union and the Respondent would continue.

E. The Respondent's Proposal to Revise Salary Rates and Rate Ranges Unilaterally.

On December 26, 1952, the Respondent acknowledged SPEEA's letter of the 20th. The letter referred to SPEEA's expressed expectations that negotiations with the Company would continue and went on to say that:

> * * * you may be assured that the Company also intends the continuance of such negotiations to the end that a new contract may be consummated between the parties, and will extend the fullest cooperation in arranging mutually convenient meetings for this purpose.

The Union was advised however that there were, in the opinion of the Respondent, "compelling reasons" why its proposals with respect to salary rates and overtime compensation should be placed in effect as soon as possible. In this connection, the Respondent's letter continued as follows:

It is recognized that the action designated * * * is less than you have demanded, and it is assumed that your demands, to the extent that they are not met by such action, will be among the subjects of further negotiation. The proposed action would be completely without prejudice to such further negotiations or to your position in respect of such negotiations.

However it is felt by the Company that such action should be taken as to the employees represented by your organization as soon as the necessary governmental approvals can be obtained, for the reasons that bargaining in respect of a new contract has extended over a period of many months, without agreement having been reached; that it appears that there is no immediate possibility of reaching any mutual agreement short of granting all or substantially all of your demands—which the Company is unwilling to do; that such action is desirable and equitable in view of the effective or contemplated increases to other Company employees; and that the Company's competitive hiring position compels such action.

The Company indicated a desire to discuss the matter, and suggested a conference at a fixed date.

On January 5, 1953, subsequent to the conference date suggested on behalf of the Respondent, Chairman Gardiner acknowledged the Respondent's statement of its intention to apply unilaterally for Wage Stabilization Board and Air Force approval with respect to its proposed changes in base salary rates and overtime compensation. Vice President

Logan was advised that SPEEA would file an objection to any such proposal with the Wage Stabilization Board and that it would file an unfair labor practice charge with the National Labor Relations Board. On the 7th of January the Respondent, in reply, advised the Union that:

Certainly no disparagement of your organization or of the negotiations being conducted by your organization is either intended, or would result from such increases inasmuch as the proposed action is less than you have demanded and it is a fact well known to your members that you have not withdrawn your overall demands but are continuing to press them. Further, as we have stated several times previously, the proposed action is completely without prejudice to your demands and further bargaining in respect of them, and the Company is ready to meet with you at any time for such purpose.

The proposed increases are not conditioned in any way upon withdrawal of your demands. Thus, it would seem the proposed action should be regarded as mutually advantageous to your organization, to the employees it represents, and to the Company; would be consistent with and in no way prejudicial to good faith bargaining; and on the contrary would amount to a constructive step in the bargaining process.

A statement as to the reasons for the Union's objection to the Company's proposed unilateral action was invited. The Union's reply, however, was somewhat delayed. On February 6, 1953—after a series

of events to be set forth elsewhere in this report—Gardiner, as the spokesman for the organization, advised the Respondent that:

It is our view that the proposed increases are so timed and planned that their effect would be to hamper SPEEA in the performance of its functions as a collective bargaining agency. Implicit in your letter is the view that the pending negotiations must be protracted, and that the increases you propose should be accepted because they can be made promptly. We take the view that the dispute as a whole can, and should be settled promptly; that the effect of any such partial adjustments in compensation would serve to delay rather than hasten completion of the pending negotiations.

Previously—as early as January 22, 1953, I find—Vice President Logan had called Chairman Gardiner to ask if SPEEA would reconsider its previous refusal to join the Company in an application to the WSB for approval of the 6 per cent increase. He had even offered, I find, to let SPEEA take credit for the increase as a partial satisfaction of its demands, and had assured Gardiner that the proposal involved no effort to embarrass the Union or impede the negotiations. Gardiner's reply, the record shows, had been negative.

F. The Organization of the Manpower Availability Conference.

Late in December of 1952, presumably at or about the time of the rejection by the SPEEA membership of the Respondent's final offer. Chairman Pearson of the MAC Committee had been in-

structed to effectuate the committee's plans, previously drafted, with respect to the conduct of a Manpower Availability Conference. Specifically, Pearson's testimony shows, he was instructed to secure a local city license to conduct an employment agency.

(This action appears to have been taken—despite the belief of the committee members that the MAC, as projected, would not fall within the scope of the Seattle city ordinance with respect to the licensing of employment agencies—in order to avoid any possible question as to the applicability of the ordinance.)

Early in January of 1953, Pearson sought and secured the suggested employment agency license. At or about the same time his draft of a letter of invitation to the MAC, prepared for transmittal to approximately 2800 employers of engineers throughout the country, was approved by the Union's Executive Committee. On a date not set forth clearly in the record, shortly after the 14th or 15th of January, 1953, the invitations were sent; they were printed on the letterhead of SPEEA and went out over the facsimile signature of Chas. Robt. Pearson, Director Manpower Availability Service (Licensed and Bonded Employment Agent).

(A copy of the letter, as sent, will be found attached to this Intermediate Report and Recommended Order as an appendix.)

A copy of the letter of invitation was sent to the Respondent. In a covering letter addressed to Vice President Logan—which the Respondent appears

to have received on January 23, 1953—Chairman Gardiner summarized the purposes for which the MAC would be held. His letter read as follows:

Dear Sir:

1. This is to advise you that SPEEA has started and will complete a Manpower Availability Conference.

2. Various companies are to be invited to come to Seattle to interview those SPEEA members who have expressed a desire to entertain offers of employment.

3. This conference is being conducted for the following purposes:

(a) To provide members with improved opportunities to bargain for their services. Our membership has requested SPEEA to restore the freedom and privacy of engineers who seek to improve their situations by changing employers.

(b) To obtain data on the true market value of engineers with various amounts of experience.

4. In offering this service to its members, SPEEA has retained an agency for bringing together those engineers and companies who may care to discuss employment possibilities. SPEEA offers no special inducement to engineers to terminate, nor does it enter in any way into negotiations between the companies and the engineers.

The testimony of Vice President Logan indicates that he had no idea, upon receipt of the above letter, as to the identity of the "agency" which SPEEA had retained to "bring together" interested engineers and companies which might care to dis-

cuss employment possibilities. He also testified that he had never previously heard of Pearson, that he was unaware of Pearson's employment by the Respondent as an engineer, and that he had no reason to connect Pearson with the "agency" previously noted. I credit this testimony. When told that Pearson was a Boeing engineer, and that he was then out of the city in connection with the Respondent's business, Logan ordered him recalled for a conference.

G. The Discharge of Charles Robert Pearson.

On January 27, 1953, pursuant to instructions, Pearson reported at the Respondent's plant. After a slight delay, he was conducted to the office of Vice President Logan. The latter indicated that he wished to discuss the letter of invitation to the MAC signed by Pearson as a licensed and bonded employment agent, as forwarded to the Respondent by Chairman Gardiner. In response to a direct inquiry, Pearson admitted that the facsimile signature on the letter was his own. When asked if he was a "licensed and bonded employment agent" however, Pearson declared that the question directly concerned his activities in behalf of SPEEA; he therefore insisted that he would be unable to discuss the matter further unless "appropriate members" of the SPEEA Executive Committee could be present. Although pressed to give a reply, Pearson insisted that the matter at issue concerned his legitimate union activities only, and could not be continued on a personal basis. Logan, however, insisted that the matter had nothing to do with SPEEA, or Pearson's membership in it, or his

activities in its behalf. He renewed his inquiry as to whether Pearson was a licensed and bonded employment agent, stating that, if this were the case, he had some suggestions to make. Pearson, however, insisted that since "any and all employment agency activities" in which he might be engaged were on behalf of SPEEA, the question involved a SPEEA matter and should be handled as such, rather than as a personal inquisition; he inquired as to whether Logan intended to call in the responsible SPEEA officials. Vice President Logan denied that the conference was either an inquisition or personal; he described it only as an attempt to get "some facts" from the employee.

> (Up to this point, the conversation had been punctuated by the efforts of Pearson to take notes, and to reduce his own comments to written form before each reply. At or about the point indicated above, however, Logan called in a secretary and had stenographic notes made with respect to the balance of the conference. No substantial conflict is revealed in the record with respect to the accuracy of Pearson's notes and I have, thus far, relied upon them. My findings with respect to the balance of the conversation in Vice President Logan's office, however, will be based upon the transcribed notes of his stenographer.)

Vice President Logan continued to insist that his inquiry had nothing to do with Pearson's membership in SPEEA or his activity in its behalf. As the record shows, he went on to say that:

* * * I am interested rather in whether you are or are not a licensed and bonded employment agent. Furthermore, I am interested in whether you are or are not working as an employment agent at this time * * * It is our belief that in the absence of any information from you and your refusal to give us any information with respect to your alleged activities as an employment agent we can make a reasonable assumption that the allegations are true. You have had reasonable opportunity to inform us otherwise if such were the case. We do not believe that you can do justice to such activities and your work as an employee of Boeing when carried on simultaneously. And, therefore, the suggestion which I had intended to make and now make is that you elect to give up one or the other of these activities. We do not propose that you shall proceed to carry both of them out * * *

Pearson reiterated his contention that the discussion could not be continued until appropriate Union representatives were present, and he refused to acknowledge Logan's comments as related to anything other than "direct" SPEEA business. Logan replied that:

You have had your chance to make your choice, and it is obvious you have no intention to do that, so that places us in the position where we have to make our own decision as to which of these activities; namely, the operation of an employment agency or your assigned work as a Boeing employee are going to be paramount in your mind. We will, therefore, make the decision that your work as an

employee at Boeing would be entirely too greatly impaired by your outside activities as an employment agent, and we are therefore unwilling to permit you to continue such activities and remain in our employ. Our decision for the reasons stated is that you are being terminated forthwith.

Pearson observed in reply that the timing of the Respondent's action was definitely connected with SPEEA's release of the Manpower Availability Conference invitations, and that his discharge could only be interpreted as a retaliatory action against SPEEA and discrimination against him in retaliation for his legitimate Union activities. He demanded that the Respondent's action be "dropped" and that appropriate Union officers be present at any further discussion of it. Vice President Logan rejected Pearson's statement as to the implications of his action, and closed the discussion.

In due course, Pearson received official notice that his employment had been terminated. The notice indicated that he had been dismissed for refusal to answer questions relative to his outside activities as an employment agent.

On the afternoon of the 27th, after his departure from the plant, Pearson attended a meeting of SPEEA's Executive Committee to discuss his discharge. A letter appears to have been dispatched immediately to the Respondent, requesting a conference on the subject of Pearson's termination. On January 29, 1953, Vice President Logan, on behalf of the Respondent, indicated willingness to arrange such a conference promptly.

(In the meantime, Pearson had received and accepted an offer of employment by SPEEA, as a member of its office staff, in order to enable him to maintain his income.)

A conference was held on February 6, 1953. The SPEEA representatives contended that Pearson had been engaged in SPEEA activities as a Union member, and that he had been unjustly terminated. They also expressed the opinion that his termination had been due to a misunderstanding; that Vice President Logan had genuinely desired to determine why Pearson had acted as he did; that Pearson had considered the subject under discussion as one of direct concern to SPEEA and thus had refused to discuss it in the absence of SPEEA representatives; and that Logan, because of his conception as to the purpose of the conference, had felt that the presence of SPEEA's representatives would not be required. In reply to this statement of the Union's position, at the conference on the 6th of February, Logan indicated that he had no objections to the attendance of SPEEA representatives, as requested by Pearson, at a second conference. On or about February 9, 1953, such a conference was held.

(There is some doubt as to whether Pearson attended the conference. His own testimony would indicate that he did not. Chairman Gardiner's testimony would indicate otherwise. The conflict is a minor one, however; I find its resolution unnecessary.)

Logan reiterated the questions he had directed to Pearson, and stated the Respondent's position with respect to the propriety of the latter's actions. The Union's view, with respect to the propriety of Pearson's conduct was stated in reply. A general discussion ensued and, in summation, Vice President Logan said that the Respondent would send a letter to Pearson restating its position.

Such a letter was dispatched by the Respondent on February 11, 1953. After a reference to the Union's request for a "more particularized statement" as the Respondent's reason for his termination, and a repetition of the reason given on his termination slip, Vice President Logan restated the Respondent's opinion that the entry on Pearson's termination slip correctly summarized the position taken by him at the January 27 conference, at which he had been informed of the reason for his termination. In response to SPEEA's request however, the letter was offered as a "review" of the matter. It reviewed the receipt of the Manpower Availability Conference invitation and Chairman Gardiner's covering letter, and went on to say that:

It was clearly apparent from this letter and invitation that SPEEA had started and intended to carry out a nation-wide solicitation of our business competitors, and others who compete with us in hiring engineers, in an effort to bring about a situation in which substantial numbers of engineers would leave the employ of this Company, for employment elsewhere.

It is obvious that even if there were an adequate supply of engineers at the present time, such a program would be against the best interests of Boeing Airplane Company. However, as you know, there is not an adequate supply of engineers at this time; the Company is in serious need of more engineers and has been conducting an extensive nation-wide advertising campaign designed to fill this need. Thus, the invitation signed by you is part of a deliberate program which is very damaging to the Company.

The letter recapitulated the Respondent's decision to recall Pearson for a conference with respect to the invitation letter, and the course of the discussion at that conference on the 27th of January. It continued as follows:

As your work in connection with the program is clearly against the best interests of the Company and in violation of your obligations as an employee, you were asked to elect either to give up your work as an employment agent or to leave the Company's employ. You refused to make such an election, leaving the Company no alternative but to terminate you.

It seems to us that while an employee continues at work, continues to draw salary from a company and is not on strike, it is no more than proper for that company to require that he do nothing intentionally which would have the effect of seriously damaging that company. On the other hand, it does not seem to us that an employer should be compelled to continue paying a salary to an employee who

engages in a deliberate program resulting in serious damage to the Company, whether or not his activities have been authorized or ratified by a collective bargaining organization of which he is a member.

For these reasons, your dismissal is considered proper.

On February 13, 1953, the SPEEA Executive Committee presented a revised contract proposal to the Respondent. With respect to base salary rates and rate ranges it proposed an increase of 9.7 per cent to the nearest dollar; in connection with this proposal, and a companion proposal with respect to the method of computation to be utilized in the determination of compensation for scheduled overtime, the Union proposed July 1, 1952, as a retroactive date. At the close of its letter, however, the Union advised the Respondent that:

It is the intention of the Executive Committee to recommend rejection of any offer made by the Boeing Airplane Company until such time as Mr. Charles Robert Pearson is reinstated unequivocally. Such reinstatement shall not be in any way contingent upon his relinquishing his prerogative of managing the SPEEA Manpower Availability Conference.

The Union's letter of invitation to the MAC, previously noted, had indicated that "commitments to attend" would be accepted by SPEEA up to February 6, 1953. Shortly after that date—which also marked the occasion of the first conference between the Union and the Respondent in regard to

Pearson's discharge, as noted—Chairman Gardiner informed James D. Esary, Jr., the Respondent's Labor Relations Manager, by telephone, that the Union had received only 12 replies, approximately, to its letter of invitation, and that the Union's plan to conduct an MAC in March had been abandoned.

> (The testimony of Pearson indicates that 18 letters were received, in toto—some of these being received after the deadline date set in the Union's letter of invitation. Some, Pearson testified, expressed interest; other replies indicated however, that the senders considered the distance to Seattle too great, or that they did not consider their needs serious enough to warrant participation.)

With this information at hand, Labor Relations Manager Esary dispatched a reply, dated on March 2, 1953, to the Union's revised contractual proposal.

In a second letter, on the same date, Labor Relations Manager Esary referred to SPEEA's indication, in its previous communication, that further contractual negotiations would be "fruitless" unless the Respondent reinstated Pearson. Esary advised the Union that:

> We are by this letter offering reemployment to Mr. Pearson to his former position as of the time he is available and returns to work * * *

The Labor Relations Manager, however, reiterated the Respondent's position that Pearson's discharge fell entirely outside the scope of the contractual

negotiations, but indicated that the Respondent did not wish to see any controversy of such a nature impair negotiations that directly affected a large number of engineers. His letter continued as follows:

Second, you have been very candid in stating to us the results of the Manpower Availability Conference, which as we understand it, did not attain the objectives for which it was intended. Mr. Pearson's termination has been reviewed in light of this fact and the fact that, to our knowledge, further activities in connection with this Conference are not anticipated. The offer to reemploy him is not to be interpreted as reflecting any different position on the part of the Company as to activities of this type conducted by those who are not on strike but continue to draw salary. We cannot consider it proper to believe that such an employee has the right to conduct such activities to the detriment of the Company.

At a conference on March 5, 1953, between representatives of SPEEA and the Respondent, Pearson's reemployment pursuant to the above-quoted offer was discussed. And on March 17, 1953, he was reinstated to his former position without prejudice, and with all of the rights and privileges acquired by him prior to his termination.

Further correspondence, in evidence, between the Respondent and SPEEA indicates a difference of opinion between the parties as to whether the restoration of Pearson's rights and privileges was the result of a "verbal agree-

ment," or a result of the Respondent's own initiative. In the light of the entire record, a resolution of this conflict would not appear to be essential to a disposition of the issues involved in the case; I have made no attempt, therefore, to reach a conclusion as to the basis on which Pearson's rights and privileges were restored.)

H. The Salary Increase.

On March 6, 1953, before Pearson's reinstatement had become effective, J. H. Goldie, Vice Chairman of SPEEA's Executive Committee, advised the Respondent's labor relations manager by letter that the Company's final offer—as outlined on November 20, 1952, and December 26, 1952, and reiterated on March 2, 1953—was again rejected. With respect to the Respondent's expressed intention to put into effect, unilaterally, the 6 per cent salary increase previously proposed and rejected, Labor Relations Manager Esary was advised that SPEEA's Executive Committee had agreed to poll the membership of the Union, in order to learn its desires with respect to the acceptance of such an "interim" offer, if the offer would include full retroactivity with respect to overtime payment computations as well as base salary rates. A reply, in this connection, was requested from the Respondent, if it had "any further suggestions" in the matter.

This communication was acknowledged by the Respondent in a letter dated March 12, 1953. It referred to the Union's position as an unqualified rejection of the Respondent's offer with respect to

basic salary rates, and went on to advise the Union that, for reasons previously stated, the Respondent felt compelled to make its proposed increases effective without prejudice to further negotiations, and that the adjustments previously outlined would be made effective forthwith. When the first paychecks which reflected the increase were distributed, they were accompanied by a notice from the Respondent to each employee in the SPEEA unit. That notice read as follows:

Notice

You will note that the enclosed check represents an increase in your pay of 6% as of March 13, 1953. On April 23, 1953, you will receive payment of the 6% increase in your base pay for the period July 1, 1952, through March 12, 1953, as well as any amount arising from an increase in the overtime compensation rate for "Exempt" classifications effective January 2, 1953. The new overtime rate for SPEEA "Exempt" employees is straight time plus $1.25 an hour where the base salary is above $100 a week, and time and one-half on all salaries of $100 a week or less. The former rate was straight time or $3.00 an hour whichever was the greater.

These increases have been placed into effect without a new contract having been signed with your collective bargaining, SPEEA. This is less than the increase requested during the course of current negotiations, and is being placed into effect by the Company without prejudice in any way to the pending negotiations between the Company and SPEEA.

Prior to placing these increases into effect SPEEA was advised and consulted, and SPEEA objected to the Company placing these increases into effect. The Company is hopeful of and looking forward to the execution of a collective bargaining agreement with SPEEA which will be mutually agreeable to the parties.

The nature of the subsequent negotiations between the parties is suggested in certain letters which have passed between representatives of the Respondent and Mr. F. D. Frajola, the new chairman of SPEEA's Executive Committee. As of the dates on which the hearings in this case were held no final agreement with respect to a new contract had been reached.

Conclusions

A. The Issues.

In this posture of the record, the General Counsel contends that Pearson, as chairman of the Manpower Availability Conference Committee, had been engaged in assistance to a labor organization and other concerted activities for the purpose of collective bargaining or other mutual aid or protection; so considered, it is argued, his activities fell within the ambit of those accorded statutory protection under the Act, as amended. The Respondent's action, therefore, in regard to the termination of his employment, is challenged as interference, restraint or coercion directed against its employees in connection with their exercise of rights statutorily guaranteed, and as discrimination in regard to his

tenure of employment and the terms and conditions of his employment, calculated to discourage membership in the Union, a labor organization.

The General Counsel also contends that Pearson's discharge was calculated to obstruct the organization of the Manpower Availability Conference, as planned, which the Union had developed to break a current impasse in the contractual negotiations. Although the General Counsel disclaims any intention to take a position with respect to the nature of the impasse, it is contended that the discharge of Pearson—calculated, as it was, to interfere with the operation of the projected conference—injected "bad faith" into the situation, and negated the existence of any good faith impasse at that time and thereafter. As a subsidiary contention, the General Counsel alleges that the Respondent's unwillingness to allow Pearson representation by the Union officials at the conference which preceded his discharge demonstrated its contempt for the Union and its intent to undermine that organization and render it ineffective as a contract negotiator. In this aspect of the case, therefore, the Respondent's discharge of Pearson is again challenged as evidence of the Respondent's bad faith, in connection with the contractual negotiations then current.

In the light of a situation, then, which the General Counsel describes as a "bad faith impasse," the unilateral salary increase which the Respondent put into effect in March, 1953, is challenged as additional evidence of a refusal to bargain in good faith, on the ground that it created a situation in

which the Union found itself unable to bargain effectively.

The Respondent's position, in opposition to these contentions, may be simply stated. It stands upon the proposition that the MAC, if successful, would have created a situation so fraught with the possibility of irreparable damage to the Company as to warrant its characterization as a type of concerted activity not entitled to statutory protection.

> (At one point, in oral argument, the Respondent's counsel suggested a possible contention that the organization of the MAC, as projected, would not have involved "concerted" activity, apparently on the ground that it would be calculated only to facilitate individual resignations from the Company's employ; this contention, however, was never fully articulated, and there is no indication that it constitutes a significant part of the Respondent's theory of the case. I have, therefore, given it no consideration.)

Pearson's activities as chairman of the MAC Committee, therefore, are characterized by the Respondent as indefensible and unworthy of statutory protection. In the alternative, the Union's attempt to organize the MAC is characterized as a pressure tactic so unfair as to deserve characterization as a Union unfair labor practice; if so, the Respondent contends, it should be held "unlawful" as contrary to statutory policy, and thus clearly beyond the ambit of statutory protection. Pearson was termi-

nated, the Respondent contends, because of his participation in an "unprotected" concerted activity. The Respondent denies that his termination involved interference, restraint or coercion, or discrimination with respect to his tenure of employment or the terms or conditions of his employment to discourage membership in the Union; and it denies, in addition, that his termination evidenced "bad faith" with respect to the contractual negotiations then in progress or that it injected an element of "bad faith" into the impasse then current with respect to basic salary rates and overtime compensation. In the light of that impasse the Respondent's unilateral action with respect to the salary adjustments previously noted should be characterized, the Respondent contends, as a matter of business necessity, and not as evidence of an improper refusal to bargain.

B. The Statutory Policy.

As the Board and the courts have frequently declared, the National Labor Relations Act, by its terms, established a number of restrictions on the common law right of employers to dismiss their employees at will—for any reason or for no reason at all. The heart of the statute, in this connection, is to be found in its 7th section, which defines the rights of employees, in pertinent part, as follows:

> Employees shall have the right to * * * assist labor organizations * * * and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection * * *

The quoted language has been held to constitute a basic charter of employee rights. Decisional doctrine, however, has long since made it clear that the rights thus defined in the statute must be construed in the light of the Act's basic policies. In its statement with respect to these policies Congress has, among other things, declared that:

> Experience has further demonstrated that certain practices by some labor organizations, their officers, and members have the intent or the necessary effect of burdening or obstructing commerce by preventing the free flow of goods in such commerce through strikes and other forms of industrial unrest or through concerted activities which impair the interest of the public in the free flow of such commerce. The elimination of such practices is a necessary condition to the assurance of the rights herein guaranteed. (Emphasis supplied)

Within the frame of reference established by the language quoted above, a rationale sufficient to justify disposition of the present case must be found.

C. Did the Manpower Availability Conference Involve a Concerted Activity?

Upon the entire record, there can be no doubt that the MAC was conceived as a device reasonably calculated to assist the Union, a labor organization; its stated objectives, as set forth in Pearson's testimony and in several communications to SPEEA members and the Respondent, were clearly intended to strengthen the position of the Union in the negotiations then current. I so find. And those

objectives—assistance to any engineers who might wish to change employers, discovery of the true "market price" for engineers, and reliance upon any resultant employee attrition as a pressure tactic —also clearly involved mutual aid and protection. Over and above any value such activities could be expected to have as a form of assistance to particular engineers who desired more lucrative employment elsewhere, the MAC was clearly intended to make possible a strong Union line in the current negotiations, for the anticipated benefit for those engineers who made no effort to leave.

Did the development of plans for the MAC involve a "concerted" activity, then? Clearly so. The original conception was developed by an officially designated Union committee. Upon the submission of the committee's report to the general membership, the suggestion with respect to a conference was overwhelmingly approved in a referendum—which appears to have been participated in by a substantial number of the organization's members.

> (The Respondent points out that of 3500 employees within the unit only 2100 were Union members at the time of the referendum; that only 871 members returned their referendum ballots—with results previously indicated—and that the MAC Committee was activated, in December, by the votes of a majority at a general membership meeting which only 182 members attended. Nevertheless, I do not believe that the referendum vote can be said as a matter of law, to be unrepresentative. There can be no

doubt that all 2100, approximately, of the SPEEA members could have voted; I find no real basis for any contention that the vote as recorded, did not reflect the desires of an interested, representative, cross-section of the membership. Even if it could be said, however, that the referendum results merely reflected the desires or intent of a minority, such a finding would not impair the validity of my conclusion—that the MAC involved a "concerted" activity, insofar as it reflected official SPEEA policy. It is so found.)

The actual conference plans were developed by a committee specifically designated for the purpose, responsible to the SPEEA Executive Committee. And Pearson, as the Chairman of the MAC Committee, appears to have maintained a close and constant liaison with responsible Union officials. Action to implement the Committee's plans appears to have been taken only after a favorable vote at the Union's membership meeting in December, and upon the specific direction of the organization's Executive Committee. There can be no doubt whatever that the MAC, as it developed, was officially sponsored by the Union, and that it represented a "concerted" activity within the meaning of that term as used in the statute. I so find.

D. Did the Manpower Availability Conference Involve a Protected Activity?

The unqualified language of the statute with respect to employee conduct entitled to protection has already been noted. And in some Board and

court decisions, under the original statute in particular, that language has been given wide scope. One of the more noteworthy decisions, upon which the General Counsel in the present case relies, finds expression in the language of Circuit Judge Learned Hand; in N.L.R.B. vs. Peter Cailler Kohler Swiss Chocolates Co. Inc., 130 F. 2d. 503 (C. A. 2) he declared that:

We agree that the Act does not excuse "concerted activities," themselves independently unlawful. N.L.R.B. vs. Fansteel Metallurgical Corp., 306 U. S. 240; N.L.R.B. vs. Sands Mfg. Co., 306 U. S. 332, 344; Southern Steamship Company vs. N.L.R.B., 316 U. S. 31; Hazel-Atlas Glass Co. vs. N.L.R.B., 102 F. 2d. 109, 118 (C. C. A. 4). But so long as the "activity" is not unlawful, we can see no justification for making it the occasion for a discharge; a Union may subsidize propaganda, distribute broadsides, support political movements, and in any other way further its case or that of others whom it wishes to win to its side. Such activities may be highly prejudicial to its employer; his customers may refuse to deal with him, he may incur the enmity of many in the community whose disfavor will bear hard upon him; but the statute forbids him by a discharge to rid himself of those who lay such burdens upon him. Congress has weighed the conflict of his interest with theirs and has pro tanto shorn him of his powers * * *

As the quotation indicates, however, the "concerted activities" deemed worthy of statutory protection are not without qualification. Very early in

the administration of the original statute, it was established that the rights therein guaranteed did not include the right to engage in concerted activities "independently" unlawful. Among the activities thus held "unprotected" were those which contravened specific statutory provisions or basic statutory policies. N.L.R.B. vs. Sands Mfg. Co., 306 U. S. 332; Scullin Steel Co., 65 N.L.R.B. 1294; Joseph Dyson and Sons, Inc., 72 N.L.R.B. 445; Thompson Products, Inc., 72 N.L.R.B. 886. Other activities denied protection were those which involved a violation of other federal legislation or necessary state police regulations. N.L.R.B. vs. Fansteel Metallurgical Corp., 306 U. S. 240, Southern Steamship Company, vs. N.L.R.B. 316 U. S. 31; American News Company, 55 N.L.R.B. 1302. And the Board, itself, quickly developed a test of its own, independently of any considerations as to the "lawful" character of a given concerted activity, to determine whether particular types of conduct ought to receive statutory protection. In Harnischfeger Corporation, 9 N.L.R.B. 676, 686, the Board was called upon to consider the rights of employees who had engaged in a partial strike, and defined the issue as follows:

The instructions given the men were designed to carry out a program of the Amalgamated; this being so, there is no question but that the action bringing about the discharges was union activity. Section 7 of the Act expressly guarantees employees the right to engage in concerted activities for the purpose of collective bargaining or other mutual

aid or protection. We do not interpret this to mean that it is unlawful for an employer to discharge an employee for any activity sanctioned by a union or otherwise in the nature of collective activity. The question before us is, we think, whether this particular activity was so indefensible, under the circumstances, as to warrant the respondent, under the Act, in discharging the stewards for this type of union activity.

Within this frame of reference, employee disobedience and partial work stoppages have been denied statutory protection as breaches of an implied condition of the employment contract. N.L.R.B. vs. Montgomery Ward & Co., 157 F. 2d. 486, 496 (C. A. 8); See C. G. Conn, Ltd., vs. N.L.R.B., 108 F. 2d. 390 (C. A. 7); Elk Lumber Co., 91 N.L.R.B. 333. In the last case cited, the Board declared that:

Either an unlawful objective or the adoption of improper means of achieving it may deprive employees engaged in concerted activities of the protection of the Act.

Wildcat strikes, undertaken in an effort to interfere with the collective bargaining process as applied by a duly authorized and designated bargaining representative, have also been denied statutory protection. Harnischfeger Corporation vs. N.L.R.B., 33 LRRM 2029, 2032 (C. A. 7) and the cases therein cited. And recently, a slowdown during contractual negotiations has been held unprotected because of its tendency to undermine the statute's general policy of balanced bargaining. Phelps Dodge Cop-

per Products Corporation, 101 N.L.R.B. No. 103, 31 LRRM 1072, 1074. cf. Underwood Machinery Company, 74 N.L.R.B. 641, 646-647. In addition, at least one court has held, expressly, that an employer ought not to be forced to finance "disloyalty" on the part of employees who issue publicity statements unfavorable to the enterprise, reasonably calculated to injure or destroy their employer's business, while continuing to collect their wages. Hoover Co. vs. N.L.R.B., 191 F. 2d. 308, 389-390 (C. A. 6).

In connection with the 1947 amendment of the Act, Congress, too, made its position clear with respect to the limitations which ought to be imposed upon "protected" concerted activity. In the House Conference Report (No. 510, 80th Congress, pp. 38-39) on the statute as amended, reference is made to certain early Board decisions that the language of the original Act protected concerted activities regardless of their nature or objectives. The conference report pointed out that these Board decisions had not received judicial approval—and went on to say that:

* * * the courts have firmly established the rule that under the existing provision of section 7 of the National Labor Relations Act, employees are not given any right to engage in unlawful or other improper conduct. In its most recent decisions the Board has been consistently applying the principles established by the courts * * *

By reason of the foregoing, it was believed that the specific provisions in the House Bill excepting

unfair labor practices, unlawful concerted activities, and violation of collective bargaining agreements from the protection of section 7 were unnecessary. Moreover, there was real concern that the inclusions of such a provision might have a limiting effect and make improper conduct not specifically mentioned subject to the protection of the act.

In addition, other provisions of the conference agreement deal with this particular problem in general terms. For example, in the declaration of policy to the amended National Labor Relations Act adopted by the conference committee, it is stated in the new paragraph dealing with improper practices of labor organizations, their officers, and members, that the "elimination of such practices is a necessary condition to the assurance of the rights herein guaranteed." This in and of itself demonstrates a clear intention that these undesirable concerted activities are not to have any protection under the act, and to the extent that the Board in the past has accorded protection to such activities, the conference agreement makes such protection no longer possible. (Emphasis supplied)

In a comparatively recent case—Jefferson Standard Broadcasting Company, 94 N.L.R.B. 1507—the Board had occasion to consider the propriety of certain discharges effectuated because the employees in question had, while still in the respondent's employ, distributed a handbill which "deliberately" sought to alienate their employer's customers by impugning the technical quality of his

product—without any reference to the fact of its publication in connection with a labor dispute. The Board found that such tactics, under all the circumstances, were hardly less "indefensible" than acts of physical sabotage. It held that the employees involved had gone "beyond the pale" when they published and distributed the handbill in question.

On appeal, this decision was reversed and remanded. Local Union No. 1229, International Brotherhood of Electrical Workers, vs. N.L.R.B., 202 F. 2d. 186 (C. A. D. C., 1952). Essentially, the court held that the Board was empowered, under the statute, to find certain types of concerted activity unworthy of protection only on the basis of a preliminary finding that such activities were unlawful. In the absence of such a finding in the case at bar, the court remanded the case for a determination as to whether the particular conduct in issue was or was not lawful. And the court's views with respect to the scope of the agency's discretion, and the standard of judgment which the agency ought to apply, were set forth as follows:

Despite the broad language of Section 7, which assures employees the "right to * * * engage in * * * concerted activities for the purpose of collective bargaining or other mutual aid and protection," certain activities are excluded from the Act's protective ambit. For example, the Act expressly prohibits jurisdictional strikes, secondary boycotts and strikes for recognition in defiance of a certified union. And the courts have denied protection to employees resorting to "unlawful" means,

e.g., a strike in contravention of the purpose of the Act, (citing cases) in violation of a federal statute forbidding mutiny, (citing case) or local laws prohibiting acts of violence or seizure of property, (citing case) or seeking "unlawful" objectives, e.g., concerted action to force an employer to violate a federal statute. (citing case) * * * Protection under Section 7 of the Act, then, is withdrawn only from those concerted activities which contravene either (a) specific provisions or basic policies of the Act or of related federal statutes, or (b) specific rules of other federal or local law that is not incompatible with the Board's governing statute * * * The Board properly applied this rule to the extent that it found that the objective of the "second-class" hand bill "—to extract a concession from the employer with respect to the terms of their employment—was lawful." But the Board did not apply this rule to the handbill as a means for achieving that objective. Instead of determining the legality or illegality of the use of the handbill, it only found that, unlike other handbills used in the dispute which were signed by the Union and made reference to the pending negotiations, this one was "hardly less 'indefensible' than acts of physical sabotage" —apparently primarily because its purpose was undisclosed on its face * * * By giving "indefensible" a vague content different from "unlawful," the Board misconceived the scope of the established rule.

If the Court of Appeals for the District of Columbia has correctly defined the limits within which the Board is free to exercise its discretion with re-

spect to the protection of concerted activity, (cf. International Union UAWA, AFL, vs. Wisconsin Employment Relations Board, 336 U. S. 245) the issue posed in the present case would appear to be relatively simple: Would the organization of a Manpower Availability Conference, as projected, have involved "unlawful" conduct, within the meaning of that concept as defined in the Court's opinion? To this question, therefore, we are now required to turn.

(Since the above was written, the Supreme Court has decided that the Board's disposition of the case at hand fell within the area of its permissible discretion in the discharge of its responsibilities under Section 10 (c) of the Act, as amended. An inquiry as to the allegedly "unlawful" character of the MAC as a Union activity, however, would still seem to be germane. I so find.)

E. Did the Organization of the Conference Involve Unlawful Activity?

The Respondent, basically, advances only one contention in this connection. Essentially, its argues that SPEEA's plan to conduct an MAC involved a rejection of the "mutual obligation" fixed by the statute upon employers and employee representatives to "confer in good faith" with respect to wages, hours and other terms and conditions of employment, or the negotiation of a trade agreement. Under the circumstances, it is said, SPEEA's course of conduct involved a refusal to bargain collectively with the Respondent and amounted to an

unfair labor practice under Section 8 (b) (3) of the statute.

In theory, the argument may be sound. If the Union's attempt to plan and conduct a Manpower Availability Conference could be said to contravene a specific provision or basic policy of the statute, its "unlawful" character, under the established precedents, would seem to be established.

In the present state of the law, however, with respect to union refusals to bargain, I find myself unable to conclude that the contention has merit. Section 8 (b) (3) of the statute has been construed in a relatively small number of cases. Nearly all of them have been concerned with a union's insistence, as a condition precedent to the execution of an agreement or the conduct of general negotiations, that the employer agree to a provision made unlawful by the amended Act. National Maritime Union of America (The Texas Company, et al), 78 NLRB 971; Amalgamated Meat Cutters and Butcher Workers of North America, A.F.L. et al. (The Great Atlantic and Pacific Tea Company), 81 NLRB 1052; International Union, United Mineworkers of America, et al, (Jones and Laughlin Steel Corporation, et al), 83 NLRB 916; American Radio Association (Atlantic and Gulf Coasts), 82 NLRB 1344; International Typographical Union, et al. (Chicago Newspaper Publishers Association), 86 NLRB 1041; (Graphic Arts League of Baltimore), 87 NLRB 1215; (Printing Industry of America), 87 NLRB 1418; Essex County and Vicinity District Counsel of Carpenters, AFL (Fair-

mount Construction Company), 95 NLRB 969; Retail Clerks International Assoc., (Safeway Stores, Inc.), 100 NLRB 390; International Typographical Union, (American Newspaper Publishers Assoc.), 103 NLRB No. 57, 104 NLRB No. 117; Local 1664, I.L.A., (Puerto Rico Steamship Assoc.), 103 NLRB No. 112. In one case, a union was found guilty of a refusal to bargain because of its insistence upon an illegal demand outside of a contract. Conway's Express, 87 NLRB 972. Neither situation is involved in the instant case.

In the Chicago Newspaper Publishers Case, the Board declared that Section 8 (b) (3) of the statute imposes upon labor organizations a duty to bargain "coextensive" with the duty imposed upon employers under Section 8 (a) (5)—and it declared that the provisions of Section 8 (d), which establish the standard of "good faith" bargaining, restate, in statutory form, the principles established under Section 8 (5) of the original statute. And in Conway's Express, the Board declared that the union's good faith in advancing its challenged proposal could not be considered dispositive of the refusal to bargain issue. In its decision, the Board pointed out that it is the tendency of such proposals to "delay or impede or otherwise to circumscribe the bargaining process" which renders them improper. Does the instant case present a factual situation in which this dictum is applicable? I find myself unable to reach and maintain such a conclusion with conviction.

The Board has held, in cases involving respondent

employers, that threats on the part of such employers to close or dismantle their plants in order to avoid any need to recognize a union, to bargain with it, or to grant particular demands, involve a refusal to bargain. See e.g., Parma Water Lifter Co., 102 NLRB No. 37, 31 LRRM 1294; Howard-Cooper Corp., 99 NLRB 891; Arlington-Fairfax Broadcasting Co., 95 NLRB 846; Dixie Manufacturing Company, Inc., 79 NLRB 645, 658. These decisions are grounded in the theory that threats of the type indicated, when coupled with an apparent current ability to make them effective, indicate a rejection of the collective bargaining principle—i.e., the absence of any desire on the part of the employer to negotiate in good faith with respect to wages, hours and other conditions of employment.

It cannot be said, in my opinion, that an analogy between threats of this kind on the part of an employer, and a union's threat to initiate action calculated to "facilitate" a significant number of personnel resignations, would be completely unreasonable.

There are distinctions between the two "threats" now under consideration, however, which can and should be drawn. An employer's threat to close his plant is, in almost every instance, coupled with a very real and present ability to make such a threat effective. Its coercive character when addressed to employees or their chosen representatives, therefore, would be readily apparent. In the case of the Union, a plan to organize and conduct a Manpower Availability Conference would undoubtedly

pose a "threat" of potentially significant employee attrition—but such resignations as might occur would of course result from the decisions of individual employees, absent any inducement from the Union, to accept a better offer. In the MAC, as planned, the Union obviously would have had no control over the offers made, or the decision of any particular employee with respect to their acceptance or rejection. The element of coercion implicit in the situation, in short, would be grounded in the Respondent's fear, not of what the Union could or might do, but of the consequences which might be expected as a result of possible employee action, if the Union's program became effective. So considered, in my opinion, the analogy between the Union's course of conduct and an employer's threat to close a plant cannot be described as complete.

Would the Union's course of conduct in and of itself, however, "delay, impede, or otherwise circumscribe" the collective bargaining process? The question certainly could be answered affirmatively —since a Manpower Availability Conference, if successful, conceivably could lead to a significant diminution in the employee complement to be covered by any negotiated agreement. And a course of conduct calculated to facilitate the resignation of dissatisfied employees would certainly appear to involve a "partial" rejection of the collective bargaining principle—at least on the part of the resigned employees.

(The Respondent contends that a course of conduct directed to the stated end, for the

"possible benefit" of the employees who remained in the Respondent's employ, would not be consistent with the statutory duty of a "certified" representative to represent all of the employees in a bargaining unit in dealings with a particular employer.)

Upon the entire record, however, there can be no doubt that the Union also conceived of the MAC as something more than a device to "facilitate an exodus" of engineers from the Respondent's employ. It appears to have been anticipated—not unreasonably, in my opinion—that the MAC would furnish SPEEA with some data as to the "market value" of engineers and thus strengthen its hand in the negotiation of a trade agreement for the engineers who remained. Such anticipations—without regard to the argument which might be made as to the weight they were given by the Union's responsible officials—certainly envisioned a continuation of the negotiations and the eventual execution of an agreement.

I find the precise issue posed by the Respondent's contention, therefore, balanced with doubt. To date, the Board has, on a number of occasions, found unions guilty of a refusal to bargain when their demands related to an objective proscribed by the statute. It has had no occasion, as yet, to exercise its discretion in a case involving a lawful union objective pursued by allegedly improper means. In the absence of any guidance in the decisions, or the statute's legislative history, I am reluctant to express a conclusion on the issue. It involves, es-

sentially, a question of Board policy—with respect to which the Board, appropriately, should be the first to speak.

One question remains. Should the Union's course of conduct be considered unlawful on any other ground? The only theory suggested by the facts which would seem to be worthy of consideration is the possibility that the Union may have been guilty of conduct equivalent to a tortious inducement of breach of contract.

As defined in Lumley vs. Gye, 2 E. & B. 216 (Q.B. 1853) this tort involved the (1) malicious and (2) active inducement (3) of the breach (4) of a contract of personal service. As the decisions in the field proliferated, however—in this country and elsewhere—the requirement with respect to proof of malice was reduced to a requirement that mere wilfulness would suffice, and even this requirement was eventually abandoned. Today—in one jurisdiction or another—almost every contract, regardless of its nature, may be the object of the tort. Inducement of a breach, as an essential element of the wrong, has given way to prevention of performance; and the concept of active procurement has been expanded to include deliberate and even negligent interference with contractual relations.

As the law now stands, then, is the concept applicable here? In my opinion, this question must be answered in the negative.

> The United States Supreme Court, in Hitchman Coal and Coke C. vs. Mitchell, 245 U. S. 229 (1917), found a union guilty of wrongful

conduct because, in the course of a successful organizational drive, it induced employees, by virtue of their adherence to the organization, to breach a so-called "yellow dog" contract which was one of their conditions of employment. Insofar as "yellow dog" contracts are concerned, the case is no longer the law of the land—but it remains the most thorough and cogent statement by our highest court with respect to the application, in the labor relations field, of the concept that the inducement of a contract breach is wrongful. I have considered the rationale of the Hitchman decision in detail. It found a violation by the union of its legal duty to refrain from interference with a contractual relation, despite the fact that the workers involved had been employed "at will" and despite the fact that the employment relationship involved had been one terminable by either party at any time. Nevertheless, I have concluded that the case will not support a conclusion that SPEEA's conduct—as outlined in this report—was tortious, at law. It is clear that the organization and conduct of the MAC would not, in and of itself, have effected a severance of the employment relationship between the Respondent and its engineers—and there is no evidence whatever that the Union intended to offer any inducements, at the conference, to persuade its members to accept any offers made. A specific disclaimer of any such intention was given to the Respondent when

SPEEA notified Vice President Logan of its plans.)

A breach of contract is procured when the breach is directly and consciously sought, either as an end desired in and for itself, or as a measure out of which to gain some ultimate aim, such as a trade advantage. But a breach is merely caused when it occurs as an incidental—though, perhaps, clearly foreseen and inevitable—by-product of an effort to achieve some objective having no connection with the object which led to the making of the contract. If the distinction between procurement and mere causation is valid, and if it be conceded that it ought to lead to a difference in results, those results should be grounded in distinctions as to the motive which caused the "actor" involved in the case to embark upon the challenged course of conduct. I find no indication of a "wrongful" motive in this case. The true basis of the tort would seem to be the policy of the law to prevent the theft of promised advantages; if so, the necessary motive must be the conscious intention to appropriate for one's self—or one's organization—that which by law belongs to another. And such a motive may be said to exist, in my opinion, only when the object of the "actor" who induces a breach of contract is the same as the object of the injured party in the making of the contract. If the "actor's" mind is bent upon an entirely different object—even though his action incidentally may cause the breach—it can hardly be called a "wrongful taking" of another's property. See Sayre, "Inducing Breach of Con-

tract," 36 Harvard Law Review, 663, 677-680 (1923). Such is the case, in my opinion, here. I find no evidence in the present record that SPEEA intended, directly and consciously, to induce or encourage engineer resignations at a Manpower Availability Conference—either as a desirable end in itself, or as a means to achieve some direct advantage. Nor do I find evidence, in the record, of a conscious desire or intention on the part of the Union, to appropriate for itself that which by law belonged to others, i.e., the relational interest between the Respondent and its engineers. Its object in organizing the MAC cannot be equated, in short, with the objectives of the Respondent in the establishment of an employment relationship. In its search for current data as to the "market value" of engineers, and in its search for a device which would strengthen its position in current contractual negotiations, the Union planned only to create a situation in which then current employment relationships might be destroyed, as an incidental—though clearly foreseen—result. Upon the entire record, therefore, I have concluded that the course of conduct with which we are here concerned, apart from any ethical judgment which might be applied to it, did not involve anything tortious. It should not, then, be characterized as "unlawful" on that ground. I so find.

F. Did the Manpower Availability Conference Involve an Indefensible Activity?

As of the date on which this is written, the Board's appeal on the remand order issued by the

Court of Appeals for the District of Columbia in connection with the Jefferson Standard Broadcasting Company case, has been submitted to the United States Supreme Court on briefs and oral argument. In opposition to the position taken by the Court of Appeals, the Board currently seeks a determination by the Supreme Court that it is free to withhold the shield of statutory protection from activities which it may consider indefensible, even though they may not be independently unlawful. Until such time as the Supreme Court speaks on the issue, therefore, the statutory obligation imposed upon the examiner and the Board requires that consideration be given to the contention that the organization of the MAC involved an "indefensible" course of conduct.

(Since the above was written, on December 7, 1953, the Supreme Court has declared, in effect, in N.L.R.B. vs. Local Union No. 1229, I.B.E.W., that the Board was empowered, and even obligated, to find the activities involved in the case before it unworthy of protection, without regard to their "lawful" or "unlawful" character. Justice Burton, for the Court, referred to the statutory mandate laid down for the Board in Section 10 (c) of the Act, as amended —which forbids the agency to require the reinstatement of individuals as employees, or the payment of back pay, if such individuals have been suspended or discharged for cause. He found, in effect, that the respondent employer involved in the case had adequate "cause" for

the challenged discharges because the employees had engaged in "disloyal" conduct. In the opinion written for the Court, the conduct in question was characterized as "disloyal" because (1) It involved "a sharp, public, disparaging attack upon the quality of the company's product and its business policies" in a manner reasonably calculated to harm the company's reputation and reduce its income; (2) the attack had no direct relationship to any "labor controversy" then current, did not challenge any "labor practice" of the company, and did not solicit "public sympathy or support" for the employees responsible; and (3) the attack was deliberately "separated"—by those responsible for it—from the current labor controversy, made no reference to it, and "diverted attention" from it. Although the Court did not adopt the Board's characterization of the conduct in question as "indefensible" it did find that the Board had adequate reason to conclude that the employees had been discharged for "cause" within the meaning of the statute. However defined, therefore, the Board's obligation to exercise a wide discretion is clear.)

The disposition of the ultimate question however, has not been easy. Fundamental considerations of statutory policy, and the place of the agency in the American constitutional scheme, are involved. Does not the exercise of the wide discretion implied in the use of "indefensibility" as a standard of judgment imply that the Board may be called upon in

these cases, to exercise a "legislative" function in its decisional process? But if so, may not Congress have expressly so intended? See the House Conference Report, previously noted.

(The Supreme Court, in its decision with respect to the Jefferson Standard Broadcasting case, recently issued, has referred to the conference report, in this respect, as providing support for its interpretation of the statute's intent.)

Basic in my analysis of the issue now presented for consideration as to the alleged "indefensibility" of SPEEA's conduct, have been certain observations of Oliver Wendell Holmes. In an article on "Privilege, Malice, and Intent" in 8 Harvard Law Review 1, 3-9 (1894), he said:

* * * The intentional infliction of temporal damage * * * is actionable if done without just cause. When the defendant escapes, the court is of opinion that he has acted with just cause. There are various justifications. In these instances, the justification is that the defendant is privileged knowingly to inflict the damage * * * But whether, and how far, a privilege shall be allowed is a question of policy. Questions of policy are legislative questions and judges are shy of reasoning from such grounds. Therefore, decisions for or against the privilege, which really can stand only upon such grounds, often are presented as hollow deductions from empty general propositions * * * or else are put as if they themselves embodied a postulate of the law and admitted of no further deduction * * *

When the question of policy is faced it will be seen to be one which cannot be answered by generalities, but must be determined by the particular character of the case * * * Plainly the worth of the result, or the gain from allowing the act to be done, has to be compared with the loss which it inflicts. Therefore, the conclusion will vary, and will depend on different reasons according to the nature of the affair * * * Perhaps one of the reasons why judges do not like to discuss questions of policy, or to put a decision in terms upon their views as lawmakers, is that the moment you leave the path of merely logical deduction you lose the illusion of certainty which makes legal reasoning seem like mathematics. But the certainty is only an illusion, nevertheless. Views of policy are taught by experience of the interests of life. Those interests are fields of battle. Whatever decisions are made must be against the wishes and opinion of one party, and the distinctions on which they go will be distinctions of degree * * * the ground of decision really comes down to a proposition of policy of rather a delicate nature concerning the merit of the particular benefit to themselves intended by the defendants * * * I make these suggestions * * * to call attention to the very serious legislative considerations which have to be weighed. The danger is that such considerations should have their weight in an articulate form as unconscious prejudice or half conscious inclination. To measure them justly

needs not only the highest powers of a judge and a training which the practice of the law does not insure, but also a freedom from prepossessions which is very hard to attain. It seems to me desirable that the work should be done with express recognition of its nature. The time has gone by when law is only an unconscious embodiment of the common will. It has become a conscious reaction * * * of organized society knowingly seeking to determine its own destinies. (Emphasis supplied)
* * * * *

How then, can a determination with respect to the alleged "indefensibility" of Pearson's MAC activity be articulated? Certain analogies, it seems to me, should first be noted.

At the outset, the right of every employee to seek more desirable employment, to solicit offers, and to resign if a more favorable offer is received, must be conceded. The Board has, however, held that the act of abandoning employment is unprotected activity, whether undertaken individually or in concert. Stibbs Transportation Lines, Inc., 98 NLRB 422; Carthage Fabrics Corporation, 101 NLRB No. 122; Crescent Wharf and Warehouse Company, 104 NLRB No. 106. In conformity with this principle, a voluntary, unconditional, notice of resignation to take effect in the future, as distinguished from a conditional "threat" to resign in the future if conditions are not met, is considered a complete act, since nothing more than the passage of time is contemplated by the parties. If no further action is to be anticipated or sought, as a condition precedent

to a voluntary termination, the activity cannot be regarded as one calculated to enforce employer capitulation for the purpose of mutual aid or protection. The Board has therefore held that when any activity involves a termination of the employment status, it is not entitled to statutory protection.

Such is not the case here, however. At best, the MAC, as projected, involved nothing more than a conditional indication that resignations might reaonably be expected to occur in the future if the Respondent failed to meet the Union's conditions —and the Board has held that a threat to quit or resign under such circumstances is a protected activity. Elwood C. Martin et al., d/b/a Nemec Combustion Engineers, 100 NLRB No. 162, enforced 33 LRRM 2046 (October 19, 1953, C. A. 9); Southern Pine Electric Cooperative, 104 NLRB No. 107.

(The Respondent has contended that the activities of SPEEA and Chairman Pearson of the MAC Committee, at the time of his discharge, amounted to overt acts that went far beyond any "threat" by employees to abandon their employment conditioned upon certain demands being met. Essentially, it is argued that it was SPEEA's declaration of its intention to hold an MAC if negotiations collapsed which involved a threat, but that the activation of the MAC and the issuance of the invitations for it constituted the first overt step in the anticipated "abandonment" of their employment by a number of the Respondent's engineers.

> Without regard to my disposition, elsewhere in this report, of the Respondent's other contentions, I find this one to be without merit. The Respondent has attempted to equate a course of conduct, directed generally to the organization of the MAC, with its possible and foreseeable results in particular cases. The argument is not persuasive.)

If an individual "threat" to resign unless certain conditions are met is considered to involve protected concerted activity, as noted, and if the Union's effort to organize and activate the MAC is conceived to be nothing more than a conditional "threat" of future employee attrition, it could be considered entitled to statutory protection. The next question, then, would appear to be whether SPEEA's plan to conduct the MAC as a concerted activity, with the support and cooperation of a substantial part of the Union's membership, ought to make any difference.

Any determination that the concerted character of the activity makes a difference with respect to its right to protection would obviously involve a reversion, at least in some degree, to generally outmoded theories of civil and criminal conspiracy in the labor relations field. These concepts still have some vitality, however. As the Restatement of Torts put it:

Particularly in the case of labor combinations, the legal history has been that mere concert may make illegal or at least require justification for

conduct in which individuals are free to engage without the requirement of justification when acting independently. Thus, even after an individual worker could withhold his services or custom from any person for any reason, a combination of workers under the same circumstances still required justification. Partly this was due to the fact that individual conduct in this sphere was not a problem, whereas concerted action was. Partly it was due to the obvious differences in power between action by individuals and action by combinations of individuals. That such differences in power exist is still true with respect to conduct of individuals or groups of individuals acting in concert * * * Vol. 4 Restatement of Torts, 95-96 (1939) (Emphasis supplied)

To the extent that its character as a concerted activity rendered it capable of effective use as a vehicle of union power, therefore, the fact that the MAC involved concerted activity may well be a significant factor in any decision as to its propriety.

* * * * *

The General Counsel and the Union rely upon the contention that unions have traditionally sought to serve their members as employment agencies; it is argued that the MAC was nothing more than a technique which the Union planned to employ in order to perform this conventional union function.

Unions, however, normally seek to make available such employment opportunities as may come to their notice for currently unemployed members.

In organizing a conference designed to stimulate and channel offers of employment, on more favorable terms, to members already employed, SPEEA was attempting to do more than most union "hiring halls" have ever done; also, it was attempting, in effect, to encourage a course of conduct, on the part of employers, long condemned by the business community; specifically, SPEEA's letter of invitation solicited interested employers, in substance, to engage in "labor piracy" as that term is generally understood.

> (The fact that the Union's letter of invitation did not mention the Respondent or the fact that most of the Union's members were employed by it ought not to affect this conclusion, in my opinion. The Respondent's status as the only firm in Seattle which utilizes a substantial number of engineers is a matter of common knowledge. Even if it could be assumed, arguendo, that the existence of an impasse in the contractual negotiations between the Union and the Respondent was not widely known, most employers, in my opinion, would be able to infer that any sizeable corps of dissatisfied engineers in Seattle would consist, in the main, of those in the Respondent's employ. It is so found.)

The record, as previously noted, shows that only 18 employers out of approximately 2800 solicited, replied to the Union's MAC invitation. Although any inferences as to the reason for the MAC's failure to arouse employer interest, during a period in which engineers were certainly in short supply,

would clearly be speculative, it certainly could be inferred that many of the employers circularized withheld a response because of their unwillingness to appear, in public, as engaged in the recruitment of engineers among those already employed.

(The SPEEA committee responsible for the circulation of its "Area Representative News Letter" did in fact, express the opinion, after the event, that many of the invited firms might have concluded that attendance at the MAC would have involved a violation of business ethics.)

The General Counsel also contends that the MAC ought to be regarded as a protected concerted activity because it was specifically calculated to overcome a barrier to "freedom of contract" on the part of engineers, effectively imposed under a so-called "Gentlemen's Agreement" among the member firms of the Aircraft Industries Association, to which the Respondent belongs.

(The Aircraft Industries Association, as the record shows, is a trade association of approximately 80 firms engaged in the manufacture of aircraft, aircraft motors, and aircraft accessories. About 3½ years ago, in the face of a "tight" labor market for engineers, and developing competition in the recruitment of engineering personnel at all levels of skill, the membership of the association appears to have adopted a resolution expressive, inter alia, of a "concensus of opinion and belief" that firms in need of engineers ought to refrain from the

solicitation or acceptance of employment applications from engineers already employed in the industry, absent knowledge and acquiescence by the particular engineer's current employer. The record indicates that most, if not all, of the association members follow such a policy, although the specific procedures employed by them to give it effect may vary.)

The record does not reveal the identity of the employers solicited to attend the MAC, but there can be no doubt that member firms of the Aircraft Industries Association would be among the most likely recipients of the Union's letter of invitation. As to them, the letter would involve an obvious request or suggestion that the "Gentlemen's Agreement" with respect to "labor piracy" in the recruitment of engineers be abandoned. Other employers solicited, of course—not parties to the resolution—would have no such problem, and would merely have to consider whether attendance at the MAC could be squared with their sense of business ethics.

There can be no doubt that the "Gentlemen's Agreement" does impair the freedom of engineers to seek employment elsewhere in the field of aircraft manufacture—at least to some extent—since an engineer who desires to open negotiations with an employer other than his own conceivably may anticipate, reasonably enough, that his relationship with his superiors in current employment could be impaired as a result of their awareness of his attempt to secure work elsewhere, if that attempt proved unsuccessful. Such a hazard would probably

exist, however, even in the absence of a "Gentlemen's Agreement" so-called. And there is no indication in the record that the implementation of the AIA resolution by the Association's membership really "froze" engineers in their jobs; attempts by individual engineers to solicit better "offers" from new employers in the industry were still possible.

Insofar as the Respondent is concerned, its responsible officials testified—in substance—that the firm, if requested to permit negotiations between an AIA member and one of its engineers, would first attempt to determine the source of the employee's dissatisfaction, and to eliminate it if possible, in the hope that the employee would then be impelled to break off the negotiations; that employees who remained dissatisfied were always given permission to negotiate secretly for alternative employment elsewhere; and that such employees were not "terminated" merely because of their open demonstration of a desire to seek another position.

While it would seem to be clear that the MAC, as projected, would have operated as a counter-measure to the "Gentlemen's Agreement", and that it would have functioned—at least insofar as the AIA members were concerned—in direct opposition to the Association's expressed policy, it is difficult to see how the character of the conference as a counter-measure could be said to endow it with privilege or justification, in the context of the present case. The policies of the Association, as expressed in the resolution noted, and as implemented by its membership, do not appear to have been so

undesirable or rigid as to call for direct opposition in order to preserve employee rights.

> (The record shows that SPEEA had requested an explanation of the "Gentlemen's Agreement during the negotiations, and that the Respondent, in a letter dated on October 13, 1952, had set forth its understanding of the so-called "agreement", and its policies and procedure in giving effect to the "agreement's" terms. The SPEEA negotiators appear to have objected to the Respondent's policy of adherence to the "agreement" on the specific ground, already noted, that it restricted the freedom of individual engineers to seek employment elsewhere. But the Respondent, apparently, refused to alter its policy of adherence to the "agreement" and refused to accept any contractual modification which conceivably could be construed as acquiescence in the organization of MAC activities as a counter-measure.)

If the firm's observance of the "Gentlemen's Agreement" had involved complete restriction of the freedom of engineers to seek employment elsewhere in the industry—in a manner somewhat analogous to unilateral insistence upon the "reserve clause" used in professional sports—self-help measures designed to overcome the restriction, like the Manpower Availability Conference, might well be considered privileged or justified—because of the social interest in a free and mobile labor supply, under most circumstances. In the absence of proof that the "agreement" operated in such a fashion, however, its

existence and implementation—however irksome—would not seem to be sufficient, in my opinion, to provide legal justification for conduct otherwise subject to question. It is so found.

> (In N.L.R.B. vs. Metal Mouldings Corporation, 12 LRRM 723 [C. A. 6] the court refused to enforce the reinstatement with back pay of an active union supporter who had, inter alia, advised his fellow metal polishers, if dissatisfied, to seek employment with a competitive firm at which his father was a foreman. The court's decision does not indicate clearly, however, whether it bottomed its refusal of an enforcement order on a belief that the employee's conduct in recruiting workers for a competitor justified his discharge, or whether it merely felt that his known and admitted activities in that respect vitiated the probative character of the other evidence relied upon by the Board to establish that he had been discharged for his union organizational activities. Additionally, it may be noted that the employee's action, apparently, had not been authorized or ratified by the union involved. It had no "official" character, and did not appear to involve "concerted activity" for the purpose of mutual aid or protection. I have not, therefore, relied upon the case in the evaluation of any contentions made in the instant matter.)

The General Counsel next contends that the impasse in negotiations between the Respondent and

the Union justified the Manpower Availability Conference.

> Chairman Gardiner testified—credibly, in my opinion—that the MAC would not have been activated if a contract with the Respondent had been in existence or immediately in prospect. Although couched in terms of opinion, this testimony seems to reflect, in sum, a consensus reached by the Union's responsible leaders. And there can be no doubt, as Gardiner also pointed out, that nothing was, in fact, done to activate the MAC until the SPEEA membership had clearly demonstrated the existence of a genuine impasse, by its rejection of the Respondent's "last" offer. Certainly, the MAC appears to have been activated in response to an impasse; whether the impasse in question justified such a response is, however, the issue.)

The strike, as a device to break an impasse in contractual negotiations, has, of course, received legislature sanction. See Section 13 of the Act, as amended. Essentially, the General Counsel seeks to equate the MAC with a strike and argues that, in this case, it should receive administrative sanction as well.

In considering this contention it should be noted at the outset that strikes, conventionally, are conceived of as temporary in character. As an economic weapon, and in legal contemplation, they look toward the preservation of a continuing—through interrupted—relationship. But the MAC, as the Union

conceived it, would have facilitated permanent terminations of employment, on the part of those employees able to utilize conference facilities to negotiate for more lucrative or more suitable employment.

(In cross examination, it may be noted—when pressed to explain why the Union considered the MAC an effective pressure tactic—Chairman Gardiner testified that SPEEA members considered termination data, i.e., data as to the rate of engineer turnover, to be "most pertinent" in the contractual negotiations, as an indication that the Respondent's wage scales and policies could stand revision. He indicated that such termination data, in itself, served as a "measure" of the opportunities existing for engineers elsewhere, and also as a measure of the "intolerableness" of current conditions in the Respondent's employ. Although he went on to deny that the MAC had been designed "primarily" to accelerate turnover, he admitted it had been recognized that an increase in turnover might develop as a "secondary aspect" of the conference, unless the engineers in attendance found that conditions at Boeing were in fact better than those available elsewhere. [Gardiner did testify, it is true, that SPEEA expected to use any information secured at the conference, as to the "going rates" for engineers at various levels of skill and experience, in its negotiations with the Respondent—but his testimony was coupled with a reference to

the pressure implicit in the restoration of "bargaining rights" to engineers, through the conference medium.] Upon the entire record, and particularly in view of the known fact that engineers were in "short" supply, it would seem to be clear that the Union did expect to see the Respondent's rate of engineer turnover accelerated as a result of the conference, and that it did expect to utilize such a development, if it occurred, as a bargaining lever in the negotiations which had reached a standstill. I so find.)

In the usual situation, the impact of a strike upon an employer's operations is both immediate and total—or, at the very least, significant. Employee attrition as the result of a Manpower Availability Conference might not have had the drastic effects characteristic of a strike situation at the outset—but there can be no doubt of the possibility that it might have reached such proportions as substantially to affect the Respondent's operations. And there can be no doubt, either, that its harmful results would have persisted far beyond those properly to be anticipated from a strike of reasonable duration. If successful, in short, the MAC could have contributed substantially to a significant impairment of the Respondent's ability to operate—which, in the case of engineers, could have lasted, conceivably, for a notably lengthy period of time.

(There is testimony in the record—which has not been disputed—as to the informed opinion

of the Respondent's officials that the successful completion of the MAC could have forced the Respondent to shut down several of its current projects; that its contracts with the Air Force might have been cancelled as a result, with immensely significant financial repercussions; and that the replacement of any experienced engineers who resigned, in the light of the current engineer shortage, would have taken as much as several years. The record shows that the fears of the Respondent in this respect were not articulated to impress the Board; they were communicated to the Union in connection with the Respondent's attempt to justify its course of conduct with respect to Pearson's termination. I so find. And the record, insofar as I can determine, contains no evidence whatever to warrant an inference that the Respondent's fears were illogical or ill-founded.)

There can be no doubt that the MAC, if conducted according to plan, could have been a source of potential damage to the Respondent—and that it conceivably could have been far more significant in its effect upon the economic health of the Respondent's enterprise than any benefit which the Union might have derived from its employment, as a pressure tactic, to break the current bargaining impasse. Such being the case, there would certainly seem to be serious reason to doubt "the merit of the particular benefit to themselves" intended by the Union membership—and, of course, serious reason to doubt, therefore, whether the impasse in the nego-

tiations could be said to "justify" the MAC as a device to stimulate renewed negotiations.

So much for the contentions of the General Counsel and the observations suggested by them. One argument advanced on behalf of the Respondent, however, remains to be noted.

The Respondent contends that the MAC, if convened at the call of engineers in its employ, would properly have been subject to characterization as an act of employee disloyalty. It is argued, specifically, that SPEEA—by the publicity it gave the MAC among the employees in the unit it represented—intended to popularize and induce participation in the conference, and that its conduct in this respect actually tended to induce and encourage the Respondent's engineers to abandon their employment as a result of such participation.

> (Chairman Gardiner did testify, it is true, that the MAC was not activated to "lure" engineers away from the Respondent's employ—but, as we have seen, an acceleration of engineer turnover within the SPEEA unit was certainly anticipated as a possible "secondary" result of the conference in question, and it is admitted that the Union intended to utilize any acceleration in turnover which might develop as an additional "lever" in the current negotiations.)

I have found the argument that SPEEA intended to induce its members to abandon their employment lacking in merit. But from the Respondent's point of view, it would seem to make little differ-

ence whether any acceleration of employee turnover was deliberately induced or whether it was merely foreseen as a possible or probable result of the Union's proposed course of action. Its counsel has argued, at length, the unfairness of any determination which would, in effect, require an employer to finance "disloyal" conduct on the part of his employees, by allowing them to engage, free of any threat of discharge or other hindrance, in a type of activity which could, conceivably, subject him to "irreparable" injury. In the light of the informed opinion expressed by the responsible officials of the Respondent—which has not been disputed—the firm would seem to have had ample reason to fear that employee attrition as a direct result of the conference could have continued to affect its operations adversely long after the termination of any current contractual negotiations with the Union here involved.

(In this connection, the Respondent also sought to elicit, for the record, testimony with respect to other "pressure tactics" suggested by the Action Committee and considered by the Union membership. Among the tactics suggested were: refusals to punch time clocks on the part of non-exempt employees; refusals to work overtime; the arrangement of simultaneous medical or dental appointments by all of the employees within the SPEEA unit; intermittent work stoppages; union meetings during working hours; and action calculated to "neutralize" the Respondent's recruitment campaign in vari-

ous colleges and universities. None of these proposals appear to have been approved by the Executive Committee, however, and none appear to have been adopted; under the circumstances I do not believe that any weight need be given, in this case, to the fact that they may have been suggested to the Union's membership at the same time as the Manpower Availability Conference. As suggestions, and nothing more, they certainly ought not to influence any judgment as to the essential character of the MAC; although I received the evidence with respect to these additional "pressure tactics" have disregarded it as immaterial with respect to any determination as to whether the MAC proposal, in and of itself, involved employee "disloyalty" by virtue of its declared purposes and anticipated effect.)

Under the circumstances, the contention that a "successful" conference necessarily involved conduct on the part of the conference managers properly subject to characterization as "disloyal" certainly cannot be dismissed out of hand.

G. Conclusions With Respect to Pearson's Discharge.

After lengthy consideration, and with due regard for the dictum of the late Justice Holmes that policy judgments in this field ought to be consciously articulated, I find myself constrained to find merit in the Respondent's contentions.

Whatever the Court of Appeals may have said in its review of the Jefferson Standard Broadcast-

ing Company case with respect to the Board's discretion, and its limits, there can be no doubt that the Congress expects the Board to continue its current policy, and to withhold any statutory sanctions for the protection of "undesirable" or "improper" concerted activity. And administrative deference to such a legislative policy would certainly seem to require the most thorough consideration of a contention that some particular type of employee conduct ought to be proscribed as indefensible.

(The Supreme Court's decision—just issued—in the Jefferson Standard Broadcasting Company case confirms the correctness of this view. After pointing out that the Board had considered the course of conduct involved in that case as "separate" and apart from any other concerted activity undertaken in connection with the "labor controversy" in which the employees were engaged, the Court went on to say that: "Even if the attack were to be treated, as the Board has not treated it, as a concerted activity wholly or partly within the scope of those mentioned in Section 7, the means used by the technicians in conducting the attack have deprived the attackers of the protection of that section, when read in the light and context of the purpose of the Act." [Emphasis supplied] Although the Court did not see fit to explicate its rationale in support of the proposition stated, it has cited many of the cases already noted in this report in support of its

conclusion. I can only infer that the Court has recognized the propriety of the concept that a given course of conduct may be denied protection under the Act if justifiably subject to characterization as "indefensible" in the light of the statutory objectives.)

Weighed in the balance, the Manpower Availability Conference, in my opinion, ought to be so characterized. In terms of the standard suggested by the late Justice Holmes, the worth of the result which the Union sought—bargaining leverage in the negotiation of a new trade agreement—cannot stand comparison with the potentially heavy damage which the Respondent could have suffered if such a conference had elicited a substantial response.

(Vice President Logan testified without contradiction, and I find, that the Respondent's backlog of business at its Seattle Division currently stands at almost an even billion dollars. It involves orders, primarily placed by the United States Air Force, for items vital to our national defense: heavy bombers, guided missiles, gas turbines, and various classified research and experimental projects. All of the Respondent's projects appear to be technical —some highly so—and impossible of completion in the absence of an adequate engineering staff. Logan estimated that if a substantial number [500] of the firm's engineers had resigned at the same time, or within a short period, the Respondent would have had to suspend one project after another as long as the exodus

continued; he expressed the opinion—without contradiction—that the firm would have lost "millions of dollars" worth of business through the forced abandonment of current projects or their cancellation by the Air Force, and that it might have taken the Respondent several years to recover from such a blow, at a cost to it of unnumbered millions of dollars. The Vice President's estimates and opinion have not been challenged as unreasonable.)

It cannot be said as a matter of law, in my opinion, that the Respondent was under an obligation to assume such a substantial risk. When confronted with the possibilities indicated, it was entitled to take appropriate defensive action. In the light of all the considerations herein expressed, therefore, and upon the entire record, I find that the Union's plan to call a Manpower Availability Conference did not involve a protected concerted activity, and that the discharge of Charles Robert Pearson for his activities in connection with the formulation and implementation of the plans for such a conference, was privileged.

H. The Negotiations With Respect to Pearson's Discharge.

If the Respondent was privileged to discharge Pearson, as I have found, it would seem to follow that his termination, in and of itself, cannot be said to constitute a "refusal to bargain" with the Union —and that it ought not to be considered evidence of "bad faith" on the part of the Respondent,

either, in connection with the contractual negotiations then current.

The General Counsel contends, however, that the Respondent failed to fulfill its statutory obligation to bargain with the Union when it denied Union representation to Pearson at the conference which preceded his discharge. Vice President Logan, in his testimony, apparently intended to suggest that his actions, during the conference in question, were dictated by a belief that it had been called to determine the facts with respect to Pearson's status as a licensed and bonded employment agent—and that no grievance or bargainable matter was involved. That position, in my opinion, cannot be characterized as sound or well taken. As the record reveals, Logan was fully prepared to suggest, in the event of an acknowledgment by Pearson with respect to his "employment agency" activities, that such activities would be considered incompatible with continued service on his part as an employee of the Respondent, and to order his discharge in the event of a refusal on his part to give up the activities in question. He was also aware, I find, of the fact that Pearson's activities were being conducted under Union sponsorship and that they involved an official Union project. Under the circumstances, Pearson may well have been within his rights, under the statute, when he sought to insist that the conference be suspended until certain designated SPEEA representatives arrived. Cf. N.L.R.B. vs. Ross Gear and Tool Co., 19 LRRM 2190, 2194-2195 (C. A. 7).

(The respondent, however, has pointed out in its brief—with considerable logical force—that Pearson apparently anticipated the subject-matter to be covered in his talk with Logan, and that the record reveals no reason why he could not have arranged for the presence of a SPEEA executive, if he had so desired.)

The question, however, clearly became moot thereafter. When the Union officials learned of the situation and requested a conference at which the organization's position could be stated, their request was readily granted; the conference was held, and the Respondent's opinion with respect to the propriety of Pearson's conduct was discussed in detail. Two additional conferences were held with a Union-designated subcommittee.

(The SPEEA representatives contended, throughout, that Pearson had been improperly discharged because his service as the MAC Committee chairman involved protected concerted activities. And the Respondent maintained the opposite view. As its counsel declare in their brief: "The situation was one in which the area of negotiation available to the parties was bounded by a proposal for the reinstatement of Mr. Pearson and a refusal to do so. SPEEA proposed it, the Respondent refused to accede, with an explanation of its position, and it is clear that an impasse was reached concerning firmly opposed viewpoints." The Act, as the Respondent asserts, does not require further

negotiation after it is apparent that a settlement of the matter in issue is impossible.)

Whether the matter, in the final analysis, was treated as a grievance or as a matter for negotiation, the Respondent appears to have fulfilled, completely, its obligation to bargain with the designated representative of its employees in regard to Pearson's discharge. I so find.

I. The Salary Increase.

Essentially, it would seem to be the General Counsel's contention with respect to the March 12, 1953, compensation adjustments that a salary increase, otherwise unobjectionable, which coincides with a course of conduct indicative of "bad faith" and a rejection of the collective bargaining principle, should itself be construed as an act of "bad faith" and, per se, as a refusal to bargain. Since the basic premise of this contention—the argument that Pearson's discharge revealed the Respondent's disinclination to recognize SPEEA'S right to press for a favorable bargain, and thus injected "bad faith" into a situation previously untainted—has been rejected, the stated contention with respect to the impropriety of the March, 1953, compensation adjustments would appear to have no merit.

(Counsel for the Respondent have also pointed out—correctly, in my opinion—that Pearson's discharge and the related conferences between the parties were never directly related to the contractual negotiations, except in connection with SPEEA's declared intention to insist upon the dischargee's reinstatement as a condition

> precedent to any further favorable consideration of the Respondent's contract offers. The impasse in the negotiations had developed before Pearson's discharge. And the Union's letter of February 6, 1953, which rejected the Respondent's proposal to effectuate the salary increases and stated its reasons for the rejection, made no mention of the Pearson incident—then a subject of concurrent discussion. Thus, even if the General Counsel's contentions with respect to the discharge could be said to have merit, it would certainly be arguable, at least, that the discharge could not—and did not—affect the character of the impasse and thereby color the Respondent's decision to adjust salary rates and rate ranges unilaterally.)

Absent all considerations involved in the allegedly discriminatory discharge, then, the record reveals nothing more than pay increases unilaterally effectuated by an employer after their presentation to the designated representative of the employees in collective bargaining negotiations. The proposed increases had been officially rejected—or, at the very least, characterized as unacceptable. As Justice Burton said in the Crompton-Highland Mills case, at 337 U. S. 217:

> Such a grant might well carry no disparagement of the collective bargaining proceedings. Instead of being regarded as an unfair labor practice, it might be welcomed by the bargaining representative, without prejudice to the rest of the negotiations. (Citing cases.)

The record in the instant case reveals a consistent effort on the part of the Respondent to secure the approval or acquiescence of SPEEA with respect to the compensation adjustments it had proposed, precisely on such grounds. But the Union refused, throughout, to indicate its approval or acquiescence with respect to the adjustments involved. I find nothing in the record to suggest that the Respondent's action was intended to "undercut" the Union or to disparage it as the exclusive representative of any employees. Indeed, the record would seem to me entirely clear—to the contrary—that the Respondent made the disputed adjustments effective only in order to assure some degree of success for its spring campaign to recruit personnel among the graduates of the nation's colleges and technical schools.

> (The testimony offered on behalf of the Respondent indicates—without contradiction—that qualified engineers were then in short supply, and that the firm's Engineering Division was inadequately staffed. Logan described the situation in the fall of 1952 as "especially critical"; I credit his estimate. The efforts of the Respondent, in the fall of 1952, to recruit new employees [as detailed at length by Vice President Logan] appear to have met with decreasing success—and the firm's Industrial Relations Department appears to have been urged, repeatedly, by the Engineering Division, to take all possible steps to improve the situation by an increase in salary rates. Later, in the fall

and winter of 1952-53, several competitive California aircraft firms appear to have instituted salary increases approximately equivalent to those offered by the Respondent; these developments, the record shows, were expected to have an adverse effect upon the Respondent's competitive position in the labor market, with respect to salary rates for newly hired engineers, unless corrected. I so find.)

And the notice which accompanied the first checks to reflect the increases indicated clearly that they had been made effective in the absence of a contract and "without prejudice" to the current negotiations between the parties. All of the employees were plainly told that the increases involved did not equal those requested by SPEEA, that SPEEA had been advised and consulted before the Respondent acted, and that the organization had presented its objections. The notice, in my opinion, was reasonably calculated to preserve the Union's prestige as a bargaining agent; I find it entirely unobjectionable. And, under all the circumstances, I find that the Respondent's action of March 12, 1953, with respect to the unilateral allowance of a salary increase and certain adjustments in connection with the calculation of overtime pay, did not involve an unfair labor practice. N.L.R.B. vs. Norfolk Shipbuilding and Drydock Corp., 195 F. 2d. 632 (C.A. 4); N.L.R.B. vs. Bradley Washfountain Company, 192 F. 2d. 144 (C.A. 7); W. W. Cross and Co., 77 NLRB 1162, enforced 174 F. 2d. 875 (C.A. 1).

Conclusions of Law

Upon the foregoing findings of fact and upon the entire record in the case I make the following conclusions of law:

1. The respondent is an employer within the meaning of Section 2 (2) of the Act, engaged in commerce and business activities which affect commerce, within the meaning of Section 2 (6) and (7) of the Act, as amended.

2. Seattle Professional Engineering Employees Association is a labor organization within the meaning of Section 2 (5) of the Act, as amended.

3. The Respondent, Boeing Airplane Company, has not engaged in unfair labor practices as alleged in the complaint, within the meaning of Section 8 (a) (1), (3) and (5) of the Act, as amended.

Recommendation

Upon these findings of fact and conclusions of law, and upon the entire record in the case, I recommend that the complaint against the Respondent, Boeing Airplane Company, be dismissed in its entirety.

Dated this 28th day of December 1953.

/s/ MAURICE M. MILLER,
Trial Examiner.

APPENDIX

Seattle Professional Engineering Employees Association

321 Arcade Building Seattle 1, Washington

Are You in Need of Additional Engineers?

The Seattle Professional Engineering Employees Association, with a membership of 2300, invites your Company to participate in a Manpower Availability Conference to be held in Seattle about March 9th, 1953. The purpose of the Conference is to put employers of engineers in contact with those of our members who are available for new positions.

Over 500 engineers, scientists and industrial mathematicians are pledged to attend the Conference. Represented in this group are men of assorted lengths of experience and types of training as is portrayed by the attached graphs. A distinction between men who are actively seeking new connections and those whose interest is more dependent upon the advantages of other situations will be noted in the make-up of the graphs.

These engineers are looking for more than a change of scenery. They are employed engineers who feel they would be capable of greater accomplishment in positions where engineering talents are directed more specifically to engineering work and where credit for individual effort and recognition of engineering excellence are more general. They seek a working climate where their training and ability will be more fully utilized and in which com-

pensation is in proportion to talent and productiveness.

In order to provide a better understanding of the type of conference which is contemplated, a general outline of its operation might be of interest. It is planned that the Conference will be conducted in two separate phases.

The first phase will provide the means of quickly and efficiently arranging interviews between the five hundred engineers and the participating companies. This will be accomplished by conducting exposition-like meetings on as many consecutive evenings as appears necessary. At this time, the engineers, perhaps accompanied by their wives, will visit the various booths which are to be provided for each of the participating companies.

The representatives of each company will here have the opportunity to address groups of engineers, to explain the company's needs and the advantages of employment with it, and to distribute descriptive literature and application blanks to those who are interested. Secretaries at a centrally located Association booth will then make appointments for private interviews.

Providing an opportunity for the participating companies to show a limited number of motion pictures is under consideration. The Association will provide ditto and mimeograph facilities for any duplicating the company representatives may require. An augmented Association secretarial staff will also be at their disposal.

The second phase of the Conference will consist

[Title of Board and Cause.]

REQUEST ON BEHALF OF RESPONDENT FOR PERMISSION TO ARGUE ORALLY BEFORE THE BOARD

In accordance with Section 102.46(c) of the Rules and Regulations of the Board, Series 6, Respondent respectfully requests permission to argue orally, before the Board, in support of the recommendation of the Trial Examiner as set forth in the Intermediate Report and Recommended Order, dated December 28, 1953, in this case.

Dated this 16th day of January, 1954.

BOEING AIRPLANE COMPANY,
Seattle Division, Respondent
/s/ By DeFOREST PERKINS,
Its Attorney

[Title of Board and Cause.]

GENERAL COUNSEL'S STATEMENT OF EXCEPTIONS

The General Counsel excepts to the Trial Examiner's findings and his failure to make findings in his Intermediate Report and Recommended Order as follows:

Page 25, line 23: Failure to make specific finding that the alleged violation of Section 8(b)(3) by the Union was not an illegal act nor violative of the Act.

Page 31, line 32: Finding that there is no indication in the record that the implementation of the AIA resolution by the Association's membership really "froze" engineers in their jobs.

Page 31, line 54: Finding that the character of the conference as a counter measure to the gentlemen's agreement does not endow it with privilege or justification.

Page 31, line 54: Failure to find that the character of the conference as a counter measure to the gentlemen's agreement does endow it with privilege and justification.

Page 32, line 24: Finding that the gentlemen's agreement in its existence and implementation would not seem to be sufficient to provide legal justification for the conduct of the MAC.

Page 33, line 35: Finding that it would seem to be clear that the Union did expect to see Respondent's rate of engineer turnover accelerated as a result of the conference, and that it would expect to utilize such development if it occurred as a bargaining lever in the negotiations.

Page 33, line 35: Failure to find that the expected acceleration in Respondent's rate of engineer turnover as a result of the conference was entirely contingent upon the possibility that Boeing would be found as a result of the conference not to be competitive in wages and working conditions.

Page 33, line 47: Conclusion that harmful results possibly resulting from the MAC would have persisted far beyond those properly to be anticipated from a strike of reasonable duration.

Page 33, line 47: Failure to find that harmful results possibly resulting from the MAC would not have persisted beyond those properly to be anticipated from a strike of reasonable duration.

Page 33, line 50: The conclusion that MAC, if successful, could have contributed substantially to significant impairment of the Respondent's ability to operate, which could have lasted for a notably lengthy period of time.

Page 34, lines 9-19: Finding that there can be no doubt that the MAC, if conducted according to plan, could have been a source of potential damage to Respondent.

Page 34, lines 9-19: Failure to find that the particular benefit to themselves intended by the Union membership was meritorious.

Page 34, lines 9-19: Finding of serious reason to doubt the merit of the particular benefit to themselves intended by the Union membership by the MAC.

Page 35, lines 35-42 and page 36, lines 1-7: Characterization of the MAC as in indefensible employee-type of conduct.

Page 36, lines 29-37: Conclusion that Respondent was not under an obligation to assume a substantial risk presented by the MAC.

Page 36, lines 9-28: Failure to find that the conjectures and estimates of Vice-President Logan, as to the possible effect of the MAC, were not evidence that such effects were the reasonably to be expected effects of activity such as the MAC as projected.

Page 36, lines 29-30: Implied finding that the

MAC was such a substantial risk that Respondent was under no obligation to assume it.

Page 36, lines 29-30: Failure to find that the MAC was not such a substantial risk that the Respondent was under an obligation to assume it.

Page 36, lines 34-37: Finding that the Union's plan to call a manpower availability conference did not involve a protected concerted activity, and that the discharge of Charles Robert Pearson for his activities in connection with the formulation and implementation of the plans for such a conference was privileged.

Page 36, lines 34-37: Failure to find that the Union's plan to call the manpower availability conference involved a protected concerted activity, and that the discharge of Charles Robert Pearson for his activities in connection with the formulation and implementation of the plans for such a conference was privileged.

Page 37, lines 36-39: Finding that Respondent fulfilled completely its obligation to bargain in regard to Pearson's discharge.

Page 37, lines 36-39: Failure to find that Respondent did not fulfill completely its obligation to bargain in regard to Pearson's discharge.

Page 37, lines 48-54: Finding that previously untainted impasse was not injected with bad faith and hence the compensation adjustments of March 1953 were not improper.

Page 37, lines 48-54: Failure to find that impasse was injected with bad faith and hence the com-

pensation adjustments of March 1953 were not proper.

Page 38, lines 6-11: Failure to find the discharge of Pearson, if not privileged, could and did affect the character of the bargaining impasse.

Page 38, lines 6-11: Conclusion that Respondent did not violate Section 8(a)(5) of the Act by unilaterally adjusting salary rates and rate changes.

Page 38, lines 6-11: Failure to conclude that Respondent violated Section 8(a)(5) of the Act by unilaterally adjusting salary rates and rate changes.

Page 38, line 59 to page 39, line 10: Finding that the notice which accompanied the first checks to reflect the unilateral salary increases was reasonably calculated to preserve the Union's prestige.

Page 38, line 59 to page 39, line 10: Failure to find that the notice which accompanied the first checks to reflect the unilateral salary increases were reasonably calculated to undercut the Union's bargaining position.

Page 39, lines 29-31: Finding as conclusion of law No. 3 that Respondent, Boeing Airplane Company, has not engaged in unfair labor practices as alleged in the Complaint within the meaning of Section 8(a)(1), (3) and (5) of the Act, as amended.

Page 39, lines 29-31: Failure to find as a conclusion of law that the Respondent, Boeing Airplane Company, has engaged in unfair labor practices as alleged in the Complaint within the meaning of Section 8(a)(1), (3) and (5) of the Act, as amended.

Page 39, line 35: Recommendation that the Complaint be dismissed in its entirety.

Page 39, line 35: Failure to recommend that the Respondent shall cease and desist from taking further action within the scope of Sections 8(a)(1), (3) and (5) and failure to order that Respondent shall take such affirmative action as would be consistent with a finding that Respondent by its acts and conduct has violated Section 8(a)(1), (3) and (5) of the Act.

[Title of Board and Cause.]

RESPONDENT'S STATEMENT OF EXCEPTIONS TO CERTAIN FINDINGS AND RULINGS OF THE TRIAL EXAMINER

It is the conclusion of the Trial Examiner as stated in the Intermediate Report and Recommended Order dated December 28, 1953, that the Respondent has not engaged in unfair labor practices as alleged in the complaint, and it is his recommendation that the complaint against the Respondent be dismissed in its entirety.

Respondent urges the adoption of such recommendation and has filed its brief in support of the Intermediate Report and Recommended Order.

The exceptions noted herein are for the purpose of permitting Respondent to continue to urge all matters in support of such recommendation that were presented to the Trial Examiner in support

of Respondent's position. Such exceptions are as follows:

1. Respondent excepts to the Trial Examiner's finding (IR 19, lines 13-17, 19-21, IR 33, lines 34-39) to the effect that the primary objective of the Manpower Availability Conference (herein designated as the MAC) was "to make possible a strong Union line in the current negotiations". Respondent does not except to any finding that the MAC at one time was intended to have such an objective, in the early stages of its development, but such finding of the Trial Examiner fails to recognize that the prime objective of the MAC, after it had passed from the stage of threat to the stage of overt actuality, was no longer to facilitate and improve the charging union's bargaining position, but rather actually to induce and cause employees represented by the charging union to leave Respondent's employ (See Gen. Couns. Ex 4 and attachment thereto).

2. Respondent excepts to the Trial Examiner's finding (IR 19, lines 35-37) that the vote of employees upon the issue of the MAC reflected "the desires of an interested, representative, cross section of the membership". Only those in the unit who were members of the charging union were afforded the opportunity to vote (Tr. 85, lines 4-7). Of 3,500 in the unit, 2,100 were polled on the subject, 872 responded, and 96 (or 10% of those responding, 4½% of those polled, and 3% of the unit) indicated a desire to change companies. 40% of those responding stated that they would not participate. Activation of the MAC was approved at a meeting

with no more than 182 in attendance (Tr. 97, lines 3-4), indicating a "majority" that actually amounted to less than 3% of those in the unit and less than 5% of the membership of the charging union (Tr. 44, line 10 to Tr. 45, line 18, Gen. Couns. Ex. 2).

3. Respondent excepts to the Trial Examiner's finding (IR 19, lines 19-20, 40-42, 51-54) that the MAC, as it developed, represented a "concerted activity" within the meaning of that term as used in the statute. It is Respondent's contention in this respect that "concerted activities", as that term is intended to be used in the statute, must be related to a collective action of employees against, or in respect of a particular employer. A great many concerted activities of employees, in the general sense of the term (e.g. organizing and participating in a community fire protection association, engaging in the social and business activities of a labor organization having no contact with or relationship to the individuals' immediate employer, etc.), are not the type of "concerted activities" to which the statutory protection is extended. In this respect it is Respondent's contention that the MAC was not a "concerted activity" in the statutory sense after it was activated and its prime objective became that of facilitating and inducing employees to leave Respondent's employ.

4. Respondent excepts to the failure of the Trial Examiner: to find (IR 23, lines 15-61, IR 24, lines 1-61, IR 25, lines 1-25) that the charging union's plan to conduct an MAC, as shown by the entire

record in this case, involved a rejection of the "mutual obligation" fixed by the statute upon employers and employee representatives to confer in good faith with respect to wages, hours and other terms and conditions of employment, or the negotiation of a trade agreement; and to find that the charging union's course of conduct involved a refusal to bargain collectively with the Respondent and amounted to an unfair labor practice under Section 8(b)(3) of the statute.

5. Respondent excepts to the Trial Examiner's finding (IR 25, lines 33-61, IR 26, lines 1-54) that the course of conduct in connection with the MAC did not amount to tortious conduct. The prime objective of the MAC after the letter (Gen. Couns. Ex. 4) was mailed to various firms throughout the United States was to facilitate and induce engineers to break off employment and contractual relationship with Respondent. The objective of the letter is indicated clearly by the contents thereof.

6. Respondent excepts to the Trial Examiner's finding (IR 29, lines 6-8) that the MAC as projected, involved nothing more than a conditional indication that resignations might reasonably be expected to occur in the future if the Respondent failed to meet the charging union's conditions. In the period prior to the discharge, the union had used the MAC simply as a threat and as a pressure tactic in the negotiations and activation was postponed pending further negotiations (Tr. 100, line 1, to Tr. 101, line 2). With full knowledge of this threat, Respondent then advised the union that Re-

spondent was unwilling to grant its demands (Resp. Ex. 11). The MAC and the activities related thereto then became matters of actuality rather than threat. After the "threat" stage and until the cancellation of further plans, the union was engaged in a course of action that in essence amounted to a categorical rejection of employment with Respondent, rather than simply an effort to improve its bargaining position.

7. Respondent excepts to the Trial Examiner's finding (IR 31, lines 24-31) that "there can be no doubt that the 'gentlemen's agreement' does impair the freedom of engineers to seek employment elsewhere in the field of aircraft manufacture—at least to some extent—since an engineer who desires to open negotiations with an employer other than his own conceivably may anticipate, reasonably enough, that his relationship with his superiors in current employment could be impaired as a result of their awareness of his attempt to secure work elsewhere, if that attempt proved unsuccessful." The record discloses no such impairment of the freedom to seek employment elsewhere. It is to be noted, in this connection, that the Trial Examiner later finds (IR 31, lines 31-32) "such a hazard would probably exist, however, even in the absence of a 'gentlemen's agreement' so-called." If the "hazard" would exist in any event, the "gentlemen's agreement" can hardly be regarded as the cause. In this connection Respondent excepts to the ruling of the Trial Examiner in admitting evidence, contended by Respondent to be irrelevant and immaterial, as to the

so-called "gentlemen's agreement" (Tr. 141, line 17, Tr. 297, line 3). It was not mentioned in the complaint and it was not pertinent to any issue raised by the complaint.

8. Respondent excepts to the Trial Examiner's ruling (Tr. 146, line 22, to Tr. 147, line 9) overruling Respondent's objection to the admission of Exhibits 11 to 15, inclusive. Such exhibits were irrelevant, immaterial, were not the best evidence and constituted hearsay.

9. Respondent excepts to the Trial Examiner's finding (IR 34, lines 42-43) that the charging union did not intend to induce its members to abandon their employment. The union executives promoted the MAC (Tr. 36, line 20, to Tr. 37, line 1). The MAC was featured time after time in the union publications (Tr. 191, line 25, to Tr. 193, line 3; Tr. 260, lines 7-22). It was characterized as a "safe" substitute for a strike (Tr. 178, lines 9-25). Forms of pledges relating to it were circulated to the union membership (Tr. 49, lines 1-4, Gen. Couns. Ex. 2). Such publicity and such circularization of pledges could not but tend to popularize and induce participation, and eventually resignations from Respondent's employ. Approval and activation of any course of action by a labor organization is in itself an inducement to participation by substantial numbers of its members and others in the unit represented by it. Abandonment of employment was the essence of the idea back of the MAC after the Pearson letter (Gen. Couns. Ex. 4) was mailed to the various firms throughout the country.

10. Respondent excepts to the Trial Examiner's finding (IR 36, lines 56-57) that the conference between vice-president Logan and Pearson, terminating in the discharge of Pearson, involved a bargainable matter insofar as such conference concerned a determination of the facts with respect to Pearson's status as a licensed and bonded employment agent. We know of no authority compelling the conclusion that a discharge for cause (i.e. discharge of an employee for engaging in work or other outside activities that are inimical to the duties and responsibilities of his position with the discharging employer) is a bargainable matter, particularly where there is no dispute or difference of opinion as to the basic facts.

Dated this 16th day of January, 1954.

BOEING AIRPLANE COMPANY,
Seattle Division

/s/ By HOLMAN, MICKELWAIT, MARION,
BLACK & PERKINS,
/s/ DeFOREST PERKINS,
/s/ WILLIAM M. HOLMAN,
/s/ F. THEODORE THOMSEN,
Its Attorneys

[Letterhead of Houghton, Cluck, Coughlin & Henry]

February 4, 1954

National Labor Relations Board
Health, Education and Welfare Building South
Washington 25, D. C.

Re: Boeing Airplane Company and Seattle Professional Engineering Employees Association. Case No. 19-CA-806.

Gentlemen:

Enclosed are seven copies each of the Exceptions and Brief of the Seattle Professional Engineering Employees Association.

We respectfully request that the Board hear oral argument in this case, and that additional time be allowed for that purpose. We submit that, with the numerous points to be presented, a minimum of one hour should be allowed for presenting SPEEA's case.

We are sending a copy of this letter to counsel for the NLRB and counsel for Boeing.

Yours very truly,

HOUGHTON, CLUCK, COUGHLIN & HENRY,

/s/ By JACK R. CLUCK

JRC:mm—Enc.

[Title of Board and Cause.]

STATEMENT OF EXCEPTIONS OF SPEEA

SPEEA joins with the General Counsel in the latter's "Statement of Exceptions" and makes the following exceptions:

1. The Trial Examiner should have found that during the course of the negotiations Boeing and SPEEA both regarded the Manpower Availability Conference as action "short of strike". (I.R. p. 14, lines 44-45; p. 15, lines 44-45; R. pp. 74-75.)

2. The Trial Examiner should have found that, prior to the discharge of Charles Pearson SPEEA had kept Boeing regularly notified of all arrangements made with respect to holding the MAC. (R. pp. 133, 199, 233, 260.)

3. The Trial Examiner erred in finding that if the MAC had been "successful" the damage to SPEEA would have amounted to millions of dollars. (I.R. p. 36, lines 8-27; R. p. 273.)

4. The Trial Examiner should have found that if the MAC had been successful the damage to Boeing would be speculative, depending upon such factors as the terms of compensation made available by firms invited to participate at the MAC, whether materially higher or lower than Boeing's, the number of openings available in such firms, if any, the desire or reluctance of employees to leave their established residence if the employment openings are elsewhere than in Seattle, and other factors.

(I.R. p. 36, lines 8-27; R. p. 273; R. p. 102-103.)

February 4, 1954.

Respectfully submitted,

HOUGHTON, CLUCK, COUGHLIN & HENRY,
Attorneys for SPEEA

United States of America
Before the National Labor Relations Board

Case No. 19-CA-806

BOEING AIRPLANE COMPANY, SEATTLE DIVISION, and SEATTLE PROFESSIONAL ENGINEERING EMPLOYEES ASSOCIATION

DECISION AND ORDER

On December 28, 1953, Trial Examiner Maurice M. Miller issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had not engaged in the unfair labor practices alleged in the complaint and recommending that the complaint be dismissed in its entirety, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Respondent, the General Counsel, and the Union filed exceptions to the Intermediate Report and supporting briefs, and the Respondent and the Union requested oral argument. The requests for oral argument are hereby

denied as the record and the exceptions and briefs, in our opinion, adequately present the issues and the contentions of the parties.[1]

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and briefs, and the entire record in this case, and, finding merit in certain of the General Counsel's and the Union's exceptions, hereby adopts only such of the Trial Examiner's findings, conclusions, and recommendations as are consistent herewith.[2]

1. The Trial Examiner concluded that the Union-sponsored Manpower Availability Conference was an unprotected activity, and that the Respondent was therefore privileged to discharge Pearson because of his participation therein. We do not agree.

The material facts are substantially undisputed. Between April and December 1952, the Union, which had represented the Respondent's engineers since 1946, and the Respondent, were negotiating for a new contract. By the latter date they had reached an impasse on the subjects inter alia of base salary rates and rate ranges. As a substitute

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[1] The request of Engineers and Scientists of America for permission to submit a brief and to participate in oral argument is hereby denied as untimely filed.

[2] For the reasons set forth in their separate dissenting opinion, Members Rodgers and Beeson would adopt the Trial Examiner's recommendation that the complaint be dismissed.

for strike action in support of its demands, the Union attempted to organize the Manpower Availability Conference as a device for bringing together representatives of various employers who needed engineers, and engineers employed by the Respondent who desired or might desire to change employment. The stated purposes of the conference were to help such engineers obtain the best competitive offer, and possibly counteract the effect of the so-called Gentlemen's Agreement;[3] to help ascertain the true market price for engineers, for use in negotiations with the Respondent; and to put pressure on the Respondent by reducing the engineering services available to it. Pearson was selected by the Union to lead the organization and activation of the conference.

On about January 15, 1953, under the Union's name and over Pearson's signature as "Director Manpower Availability Service (Licensed and Bonded Employment Agent)," invitations to attend

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[3] The Gentlemen's Agreement was an agreement or understanding among the members of the Aircraft Industries Association, an association of approximately 80 companies in the aircraft manufacturing and related industries, including the Respondent, that they would not inter alia offer employment to any employee of a member of the Association without that member's express permission. We reject the Respondent's contention that the evidence adduced with respect to the impact of the Gentlemen's Agreement was inadmissible hearsay, and also reject its further contention that the impact of that agreement was not properly in issue in this proceeding.

the conference were sent to approximately 2800 employers of engineers. The invitations stated that their purpose was to put employers of engineers in contact with employed Union members who were dissatisfied with either their working conditions or their compensation, and were therefore available for new positions; the invitations pointed out that some of the Union's members were actively seeking new positions, while the interest of others would depend on the advantages to be gained from a change in employment. A copy of the invitation was sent to the Respondent, with a covering letter to Vice-President Logan, signed by the Chairman of the Union's executive committee, advising him that the Union was conducting the conference and had retained an agency to bring its members and prospective employers together. Logan was further advised that the purpose of the conference was to enable the Union members to bargain for their services, and to obtain for the Union data as to the true market value for engineers.

On January 27, 1953, Logan discharged Pearson because of his activities in connection with the Manpower Availability Conference. The Respondent's reasons, as presented to the Union, were in substance that the conference was a deliberate plan to create a situation in which substantial numbers of engineers would leave the Respondent; such a situation would be very damaging to the Respondent, particularly in view of the existing shortage of engineers; Pearson's activities in connection with the conference were against the Respondent's best

interests; and the Respondent was not required to continue paying a salary to an employee engaged in a program seriously damaging to it.

The Union's efforts to activate the conference were unsuccessful, and Pearson was ultimately reinstated by the Respondent.

The question presented by Pearson's discharge, in its context, is whether the Manpower Availability Conference, as a device for achieving the Union's lawful objectives, was a means entitled to the protection of the Act. In answering that question in the negative, the Trial Examiner weighed in the balance the worth of the objectives sought by the Union and the potentialities of damage to the Respondent and, finding the former outweighed by the latter, concluded that the Manpower Availability Conference ought to be characterized as indefensible and therefore unprotected. As authority for his rationale, the Trial Examiner appears to have relied largely on the Jefferson Standard Broadcasting case.[4] Although that case involved conduct characterized as indefensible, neither that case nor any other case under the Act supports a rationale which weighs potential benefits against potential damage, and arrives at a result predicated upon a subjective value judgment. Such an approach, moreover, presents the obvious danger that decisions

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[4] Jefferson Standard Broadcasting Company, 94 NLRB 1507, 1511-1512, affirmed sub nom. N.L.R.B. vs. Local Union No. 1229, International Brotherhood of Electrical Workers, 346 U.S. 464, 475 et seq.

concerning the rights of employers and employees under the Act will be controlled by subjective feelings, rather than objective facts. Such a test we cannot accept.

The answer to the question can, however, be found by reference to the many Board and Court precedents establishing and delineating the rights and obligations of employers and employees in seeking to gain their legitimate economic objectives. The Manpower Availability Conference was initiated to achieve two principal objectives—for purposes of mutual aid or protection, to secure other employment for those Union members who desired to change employment, and possibly to counteract the effect of the Gentlemen's Agreement,[5] and for purposes of collective bargaining, to strengthen the Union's hand in its negotiations with the Respondent. No citation of specific cases is needed to establish that concerted activities for such purposes are presumptively lawful and protected. They do not lose their protection merely because they are novel; nor do they lose their protection solely because they may result in financial loss to the employer against whom they may be directed.[6] Such concerted activ-

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[5] Whether the Gentlemen's Agreement in fact restricted the employment opportunities of the Respondent's engineers is in our opinion immaterial to the issues of this case. Whether or not a concerted activity is protected does not depend on whether or not it is necessary.

[6] The classic example of a protected concerted activity—a strike—obviously may result in serious financial loss to the affected employer. See also

ities lose the protection of the Act, and those who participate in them become subject to disciplinary action, only when they contravene the policies of the Act, or some other basic public policy.

Activities which have been held to be unprotected or unlawful under these principles, or to warrant withholding the remedial provisions of the Act, have included such conduct as violence or threats of violence,[7] seizure of property,[8] attempts at unilateral dictation of terms of employment or other usurpation of working time,[9] interference between an employer and its customers while continuing to work,[10]

N.L.R.B. vs. Peter Cailler Kohler Swiss Chocolates Company, Inc., 130 F.2d 503, 506 (C.A. 2). It would seem moreover to be apparent that other normal and lawful activities of a union, such as the successful negotiation of a wage increase or other changes in terms and conditions of employment, may well involve an added financial burden to the employer.

[7] W. T. Rawleigh Company vs. N.L.R.B., 190 F. 2d 832 (C.A. 7).

[8] N.L.R.B. vs. Fansteel Metallurgical Corp., 306 U.S. 240.

[9] N.L.R.B. vs. Montgomery Ward & Company, Inc., 157 F.2d 486, 496-497 (C.A. 8); C. G. Conn, Limited vs. N.L.R.B., 108 F.2d 390, 397 (C.A. 7); Phelps Dodge Copper Products Corporation, 101 NLRB 360, 367-369; Underwood Machinery Company, 74 NLRB 641, 645-647.

[10] The Hoover Company vs. N.L.R.B., 191 F.2d 380, 386, 389-390 (C.A. 6) Montgomery Ward & Company, 108 NLRB No. 152; Jefferson Standard Broadcasting Company, supra.

engaging in harassing tactics,[11] intermittent work stoppages to win unstated ends,[12] and engaging in conduct which cast doubt on the Union good faith at the bargaining table.[13] But this Union's concerted activity, as expressed through the Manpower Availability Conference, was subject to none of these disabilities; nor did it otherwise contravene the policies of the Act or any other basic public policy. There was here in essence only a conditional threat that some of the Respondent's employees would resign if the Respondent did not meet the Union's stated bargaining demands, conduct which the Board, with Court approval, has held to be protected concerted activity.[14]

Moreover, here the Manpower Availability Conference was directly related to matters of collective bargaining in issue between the Respondent and the Union—notably wages, as to which an impasse had been reached in negotiations. And the nature of Pearson's conduct in connection with the Confer-

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[11] Textile Workers Union of America, CIO, et al. (Personal Products Corporation), 108 NLRB No. 109.

[12] International Union, U.A.W.A., A.F. of L., Local 232, et al., vs. Wisconsin Employment Relations Board, et al., 336 U.S. 245.

[13] Bausch & Lomb Optical Company, 108 NLRB No. 213.

[14] Southern Pine Electric Cooperative, 104 NLRB 834. Nemec Combustion Engineers, 100 NLRB 1118, 1123, enf. 207 F.2d 655 (C.A. 9), cert. den. 347 U.S. 917.

ence cannot be equated with the conduct involved in the cases relied on by the dissent. The vice of the employees' conduct in the Jefferson Standard Broadcasting case was that it involved a direct attack upon the employer and its business, unrelated to terms or conditions of employment or to any matter in issue between the union and the employer. In that case, striking union members circulated handbills vitriolically attacking the employer on the quality of its television broadcasts, calculated to solely injure the employer's business and omitting all reference to a labor controversy lest the disclosure of motive might hurt their cause in the eyes of the public. In the Hoover case, the union engaged in a boycott of the employer's products—likewise an action directed solely at injury to the Employer's business, and unrelated to any collective bargaining issue.[15] Here the employees collectively were seeking legitimate ends—to broaden their opportunities for employment, to obtain the best market for their services, and to lessen their dependence upon the Respondent for employment—all matters clearly, and properly, related to the issue of wages, then the subject of negotiation with the Respondent.[16] To hold, as the Trial Examiner con-

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[15] The Montgomery Ward case cited by the dissent involved an unlawful usurpation of working time. See footnote 9, supra.

[16] Member Murdock is disposed to believe that an important aspect of the vice which the courts found in the employees' conduct in Jefferson Standard Broadcasting and in Hoover was that it involved an

cluded and as our dissenting colleagues would hold, that such activity ought to be characterized as indefensible, and therefore unprotected, would in our opinion be an unwarranted extension of the doctrine involved in the cases on which they rely, and an unwarranted intrusion on the rights of employees as guaranteed in Section 7 of the Act. Such a step we are not prepared to take.

Under all the circumstances, we find that the Manpower Availability Conference was a concerted activity protected by Section 7 of the Act. As the Respondent discharged Pearson because of his participation in a protected concerted activity, it thereby discriminated against him to discourage union membership and activity, in violation of Section 8

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attempt by employees not on strike to interfere with the employer's efforts to sell the very same services or products which the employees were being paid to produce. Thus in the Jefferson case the Court agreed that employees had been discharged "for cause" who had made a "sharp, public, disparaging attack upon the quality of the company's product and its business policies." And in Hoover, although the goal was recognition of their union, the court said: "It is a wrong done to the company for employees, while being employed and paid wages by a company to prevent others from purchasing what their employer is engaged in selling and which is the very thing their employer is paying them to produce. An employer is not required under the Act to finance a boycott against himself." The instant case is distinguishable because it did not involve any disparagement or boycott of the employer's product or services—only a concerted effort by employees to obtain a better market for their services after an impasse in wage negotiations.

(a) (3) of the Act, and further interfered with, restrained, and coerced its employees in the exercise of rights guaranteed by Section 7 of the Act, in violation of Section 8 (a) (1). Whether the Respondent's conduct be viewed as a violation of Section 8 (a) (3), or Section 8 (a) (1), or both, we further find that the remedy of back pay hereinafter provided will effectuate the policies of the Act.

2. We agree with the Trial Examiner that the Respondent did not refuse to bargain in violation of Section 8 (a) (5). Pearson's discharge resulted from the Respondent's good faith but mistaken belief as to its rights under the Act; such a discharge is therefore neither evidence that the Respondent was not bargaining in good faith, nor itself a refusal to bargain. In view of the Respondent's good faith bargaining concerning the discharge, following the event, we find it unnecessary to decide the extent of the Respondent's obligation, if any, to bargain before such a discharge.[17] In the absence of any evidence of bad faith we find, in agreement with the Trial Examiner, that the Respondent did not violate the Act in connection with the salary increase involved herein.

The Effect of the Unfair Labor Practices Upon Commerce

The activities of the Respondent set forth above, occurring in connection with the operations of the

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[17] S. D. Cohoon & Son, 101 NLRB 966, 967.

Respondent set forth in Section I of the Intermediate Report, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several states, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

The Remedy

Having found that the Respondent has engaged in and is engaging in certain unfair labor practices, we shall order that it cease and desist therefrom and take certain affirmative action to effectuate the policies of the Act. As the Respondent's unfair labor practices resulted from its good faith but mistaken belief concerning its rights under the Act in a limited area, and there is nothing therein to suggest the likelihood of other types of violations of the Act, we shall order it to cease and desist only from engaging in the same or any like or related conduct.

We have found that the Respondent interfered with, restrained, and coerced its employees, and discriminated in regard to Pearson's hire and tenure of employment. Although Pearson has been reinstated, he is entitled to reimbursement for any loss of pay suffered as a result of the Respondent's unfair labor practices. We shall therefore order that the Respondent make him whole for any loss of pay suffered as a result of the Respondent's unfair labor practices by payment to him of a sum of money equal to that which he normally would have earned as wages during the period from the date of his discharge to the date of the Respondent's offer of

reinstatement, less his net earnings[18] during the same period. We shall also order the Respondent to make available to the Board, upon request, payroll and other records to facilitate the checking of the amount of back pay due.[19]

On the basis of the foregoing, the Board hereby strikes all reference to Section 8 (a)(1) and (3) from the Trial Examiner's Conclusion of Law numbered 3, and makes the following:

Supplemental Conclusions of Law

4. By discriminating in regard to the hire and tenure of employment of Charles Robert Pearson, thereby discouraging membership in Seattle Professional Engineering Employees Association, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (3) of the Act.

5. By interfering with, restraining, and coercing its employees in the exercise of rights guaranteed by Section 7 of the Act, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

6. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

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[18] Crossett Lumber Company, 8 NLRB 440; Republic Steel Corporation vs. N.L.R.B., 311 U.S. 7.

[19] F. W. Woolworth Company, 90 NLRB 289.

Order

Upon the entire record in this case and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Boeing Airplane Company, Seattle, Washington, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in Seattle Professional Engineering Employees Association, or in any other labor organization of its employees, by discriminating in regard to their hire or tenure of employment, or any term or condition of employment;

(b) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form labor organizations, to join or assist Seattle Professional Engineering Employees Association, or any labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, or to refrain from any or all of such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8 (a) (3) of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Make whole Charles Robert Pearson in the

manner set forth in the section hereinabove entitled "The Remedy;"

(b) Post at its plant in Seattle, Washington, copies of the notice attached hereto as Appendix A.[20] Copies of said notice, to be furnished by the Regional Director for the Nineteenth Region, Seattle, Washington, shall, after being duly signed by the Respondent's representative, be posted by the Respondent immediately upon receipt thereof and be maintained by it for a period of sixty (60) consecutive days thereafter, in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material;

(c) Upon request, make available to the National Labor Relations Board, or its agents, for examination and copying, all payroll records, social security payment records, time cards, personnel records and reports, and all other records necessary to analyze the amount of back pay due under the terms of this Order;

(d) Notify the Regional Director for the Nineteenth Region in writing, within ten (10) days from the date of this Order, what steps the Respondent

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[20] In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted in the notice for the words "A Decision and Order" the words "A Decree of the United States Court of Appeals Enforcing An Order."

has taken to comply herewith.

It Is Hereby Further Ordered that except as otherwise found herein the complaint in this case be, and it hereby is, dismissed.

Dated, Washington, D. C., Sept. 30, 1954.

[Seal] GUY FARMER, Chairman
ABE MURDOCK, Member
IVAR H. PETERSON, Member
National Labor Relations Board

Members Philip Ray Rodgers and Albert C. Beeson, dissenting in part:

We dissent from the conclusion of our colleagues that the Respondent, in discharging Pearson, violated Section 8 (a) (1) and (3) of the Act. Although, like our colleagues, we cannot agree with the subjective approach of the Trial Examiner to this issue, we nevertheless believe that he reached the correct result because the Union's concerted activities, as expressed through the Manpower Availability Conference, contravened the basic policies of the Act.

The Trial Examiner concluded—and the majority does not dispute this conclusion—that the Union's activity, in seeking to facilitate the resignations of a substantial number of the Respondent's engineers, could have caused substantial damage to the Respondent's business. Moreover, contrary to the assertion of the majority, such damage cannot be equated with the losses potentially inherent in a

strike; for the damage caused by the Union's activities would have resulted from a permanent severance of the employer-employee relationship and not, as in a strike, from the mere temporary cessation of work. Pearson sought both to participate in the Union's activity and to continue to draw his pay from the Respondent. The Respondent discharged him because it did not believe it was required to finance such an injury to itself by continuing on its payroll an employee engaged in activities designed to induce other employees to sever their employment relationship. The Respondent's belief, in our opinion, was correct, and its action was wholly within its rights.

The situation presented by this case is not new—for the Board and the Courts have held that an employer is not required to finance an injury to itself by retaining on its payroll employees whose participation in concerted activities was directed toward injuring or destroying its business.[21] In affirming the Board's conclusion in the Jefferson Standard Broadcasting case, the Supreme Court stated, at pp. 472, 476:

> There is no more elemental cause for discharge of an employee than disloyalty to his employer. It is equally elemental that the Taft-Hartley

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[21] Jefferson Standard Broadcasting Company, 94 NLRB 1507, 1511-1512, affirmed sub nom N.L.R.B. vs. Local Union No. 1229, International Brotherhood of Electrical Workers, 346 U.S. 464; The Hoover Company vs. N.L.R.B., 191 F.2d 380 (C.A. 6); Montgomery Ward & Company, 108 NLRB No. 152.

> Act seeks to strengthen, rather than to weaken, that cooperation, continuity of service and cordial contractual relation between employer and employee that is born of loyalty to their common enterprise * * *
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> * * * It [the employees' conduct] was a continuing attack, initiated while off duty, upon the very interests which the attackers were being paid to conserve and develop. Nothing could be further from the purpose of the Act than to require an employer to finance such activities. Nothing would contribute less to the Act's declared purpose of promoting industrial peace and stability * * *

In that case, the Supreme Court also quoted with approval the following language from the opinion of the Court of Appeals in the Hoover case:

> An employee can not work and strike at the same time. He can not continue in his employment and openly or secretly refuse to do his work. He can not collect wages for his employment, and, at the same time, engage in activities to injure or destroy his employer's business * * *

In our opinion, these salutary principles are equally applicable to Pearson's discharge. We are not here concerned with the legitimacy of the Union's objectives, but rather with the illegitimacy of the means by which the Union sought to achieve those objectives. The Manpower Availability Conference was not a gathering together in concert of employees in order to compel the grant of a bar-

gaining demand by a temporary refusal to work; it was, rather, an employment agency operated under the aegis of the Union for the purpose of causing the permanent severance of the employment relationship. Such activity is the antithesis of the purposes of the Act, which seeks to strengthen the bonds of cooperation between employer and employee. It is equally as disloyal, equally as injurious to the employer's business, and equally as disruptive of industrial peace and stability, as the conduct which was condemned in the above-cited cases. Because it was conceived and utilized for purposes opposed to the purposes of the Act, the activities of the Manpower Availability Conference derive no protection from the guarantee of Section 7 of the Act. The Respondent's discharge of Pearson, because of his participation in such an unprotected activity, was accordingly not unlawful, and we would therefore dismiss the complaint in its entirety.

Dated, Washington, D. C., Sept. 30, 1954.

PHILIP RAY RODGERS, Member
ALBERT C. BEESON, Member
National Labor Relations Board

APPENDIX A

Notice to All Employees Pursuant to a Decision and Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our employees that:

We Will Not discourage membership in Seattle Professional Engineering Employees Association, or in any other labor organization, by discriminating in regard to the hire or tenure of employment of our employees, or any term or condition of employment.

We Will Not in any like or related manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form labor organizations, to join or assist Seattle Professional Engineering Employees Association, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, or to refrain from any or all of such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized by Section 8 (a) (3) of the Act.

We Will make whole Charles Robert Pearson for any loss of pay suffered as a result of our unfair labor practices.

All our employees are free to become or remain or to refrain from becoming or remaining members of the above-named union or any other labor organization except to the extent that this right may be affected by an agreement in conformity with Section 8 (a) (3) of the Act. We will not discriminate in regard to hire or tenure of employment or any term or condition of employment because of

membership in or activity on behalf of any such labor organization.

Dated.....

BOEING AIRPLANE COMPANY
(Employer)

By .....
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

In the United States Court of Appeals
for the Ninth Circuit

No. 14540

BOEING AIRPLANE COMPANY, a corporation,
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

CERTIFICATE OF THE NATIONAL LABOR RELATIONS BOARD

The National Labor Relations Board, by its Executive Secretary, duly authorized by Section 102.84, Rules and Regulations of the National Labor Relations Board—Series 6, as amended, hereby certifies that the documents annexed hereto constitute a full and accurate transcript of the en-

tire record of a proceeding had before said Board, entitled, "Boeing Airplane Company, Seattle Division and Seattle Professional Engineering Employees Association," Case No. 19-CA-806 before said Board, such transcript including the pleadings and testimony and evidence upon which the order of the Board in said proceeding was entered, and including also the findings and order of the Board.

Fully enumerated, said documents attached hereto are as follows:

1. Order designating Maurice M. Miller, Trial Examiner for the National Labor Relations Board, dated June 23, 1953.

2. Stenographic transcript of testimony taken before Trial Examiner Miller on June 23, 24 and 25, 1953, together with all exhibits introduced in evidence.

3. Petitioner's[1] letter dated July 7, 1953, requesting extension of time to file brief.

4. Copy of Associate Chief Trial Examiner's telegram, dated July 9, 1953, to all parties granting extension of time to file briefs.

5. Petitioner's motion to correct transcript received July 24, 1953.

6. Trial Examiner Miller's Order correcting transcript issued on November 10, 1953, together with affidavit of service and United States Post Office return receipts thereof.

7. Copy of Trial Examiner Miller's Intermedi-

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[1] Respondent before the Board.

ate Report and Recommended Order, dated December 28, 1953, (annexed to Item 16 hereof), and Order transferring case to the Board, dated December 28, 1953, together with affidavit of service and United States Post Office return receipts thereof.

8. Seattle Professional Engineering Employees Association's [2] (hereinafter called SPEEA) telegram, dated January 8, 1954, requesting extension of time to file exceptions and brief.

9. General Counsel's telegram, dated January 11, 1954, requesting extension of time to file exceptions and brief.

10. Copy of Board's telegram, dated January 12, 1954, to all parties granting extension of time to file exceptions and briefs.

11. Petitioner's request for permission to argue orally before the Board, dated January 16, 1954. (Denied. See page 1 of Decision and Order.)

12. General Counsel's exceptions to the Intermediate Report received February 1, 1954.

13. SPEEA's letter, dated February 4, 1954, requesting the Board to hear oral argument. (Denied. See page 1 of Decision and Order.)

14. Petitioner's exceptions received February 5, 1954.

15. SPEEA's exceptions received February 8, 1954.

16. Engineers and Scientists of America's telegram, dated April 7, 1954, requesting permission to

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[2] Charging Party before the Board.

file brief and participate in oral argument. (Denied. See footnote 1, page 1 of Decision and Order.)

17. Copy of Decision and Order issued by the National Labor Relations Board on September 30, 1954, with Intermediate Report annexed, together with affidavit of service and United States Post Office return receipts thereof.

In Testimony Whereof, the Executive Secretary of the National Labor Relations Board, being thereunto duly authorized as aforesaid, has hereunto set his hand and affixed the seal of the National Labor Relations Board in the city of Washington, District of Columbia, this 9th day of November, 1954.

[Seal] /s/ FRANK M. KLEILER,
Executive Secretary, National
Labor Relations Board

[Endorsed]: No. 14540. United States Court of Appeals for the Ninth Circuit. Boeing Airplane Company, a corporation, Petitioner, vs. National Labor Relations Board, Respondent. Transcript of Record. Petition for Review and Petition to Enforce Order of the National Labor Relations Board.

Filed: November 15, 1954.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 14540

BOEING AIRPLANE COMPANY, a corporation,
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

PETITION FOR REVIEW OF AND TO SET ASIDE, IN PART, AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

Comes now Boeing Airplane Company (hereinafter referred to as "Boeing"), petitioner in the above entitled proceeding, by its attorneys, and petitions this Honorable Court to review and set aside, in part, an Order dated September 30, 1954, of respondent, National Labor Relations Board (hereinafter referred to as the "Board"), by which Boeing is aggrieved and its interests are adversely affected, and respectfully shows to the Court:

1. Boeing is a corporation, organized and existing pursuant to the laws of the State of Delaware, and maintains its principal place of business at Seattle, Washington. Boeing is engaged in the business of the production of aircraft, parts therefor and related productions, in various localities including King County, Washington.

2. This Court has jurisdiction of this proceeding pursuant to the provisions of Section 10(f) of the

National Labor Relations Act (49 Stat. 452) as amended by the Labor-Management Relations Act, 1947, 61 Stat. 146, 29 U.S.C. Section 131 et seq., as amended (hereinafter referred to as the "Act").

3. The nature of the proceedings as to which review is sought is as follows:

(a) On June 3, 1953, the General Counsel of the Board, on behalf of the Board, issued a Complaint against Boeing (Board Case No. 19-CA-806), based upon a Charge filed by Seattle Professional Engineering Employees Association, a labor organization (hereinafter referred to as "SPEEA"), which Charge was filed April 20, 1953 and amended May 19, 1953. The Complaint alleged that Boeing had engaged in and was engaging in certain unfair labor practices affecting commerce within the meaning of Sections 8(a)(1), (3), and (5) and Section 2(6) and (7) of the Act. The Complaint included, in substance, allegations as follows:

(i) That Boeing and SPEEA were engaged in collective bargaining negotiations concerning the terms of a new agreement at certain times in 1952 and into the year 1953, and during such period, Boeing, in violation of the Act, discharged one of its employees, a Charles Robert Pearson, because of his activities as chairman of a committee formed by SPEEA to plan and operate a "Manpower Availability Conference" the purpose of which was to facilitate SPEEA's members in obtaining employment as engineers with companies other than Boeing;

(ii) That Boeing, in discharging Pearson and in

later offering to reemploy him, refused and failed to bargain in good faith with SPEEA in violation of the Act;

(iii) That on or about March 12, 1953, Boeing unilaterally put into effect wage increases for the employees represented by SPEEA in violation of the Act.

(b) On June 12, 1953 Boeing served and filed its Answer to the Complaint, admitting in such Answer that Boeing was engaged in commerce within the meaning of the Act; admitting that collective bargaining negotiations between Boeing and SPEEA had proceeded throughout the period mentioned in the Complaint; admitting that Boeing discharged Pearson because of his activities in connection with the Manpower Availability Conference; admitting that a purpose of such Manpower Availability Conference was to facilitate SPEEA's members in obtaining employment as engineers with companies other than Boeing; admitting its offer of reemployment to Pearson; alleging Pearson's acceptance of such reemployment, with restoration, as of the date of discharge, of Company Service and other benefits incident to Pearson's prior employment by Boeing; alleging by way of information that Pearson was employed by SPEEA throughout the period during which he was not in Boeing's employ; admitting that Boeing unilaterally had placed such wage increase in effect; alleging that such increase was less than the increase demanded by SPEEA and that it was made effective only after first having discussed such increase with

SPEEA and after having given notice thereof to SPEEA; but denying that Boeing had committed any unfair labor practices or violations of the Act whatever. Boeing's Answer further contained a timely charge against SPEEA, in which that organization was charged by Boeing to have refused to bargain collectively in good faith with Boeing, in violation of Section 8(b)(3) of the Act, by reason of SPEEA's organizing, promoting and operating the Manpower Availability Conference at the same time that collective bargaining negotiations were being conducted between the parties. No Complaint against SPEEA was issued by the Regional Director, based upon such charge, and no action whatever was taken with respect thereto, within the knowledge and information of Boeing.

(c) Pursuant to notice, a hearing was held on June 23, 24 and 25, 1953, at Seattle, Washington, before a Trial Examiner designated by the Board. On December 28, 1953 the Trial Examiner issued an Intermediate Report and Recommended Order in which it was concluded that Boeing had not engaged in any unfair labor practices as alleged in the Complaint and in which it was recommended that the Complaint against Boeing be dismissed in its entirety.

(d) On December 28, 1953 the Board issued its Order transferring the case to, and continuing it before the Board.

(e) On or about January 16, 1954, Boeing timely served and filed with the Board its Statement of Exceptions to Certain Findings and Rulings of the

Trial Examiner, challenging the propriety and legality of those of the Trial Examiner's rulings and findings considered to be adverse to Boeing, and at the same time filed its request, as did SPEEA, for permission to argue orally before the Board. As shown by the Board's Order, to which reference is hereinafter made, the Board denied such request for oral argument.

(f) The Board issued its Decision and Order in the case on September 30, 1954, a copy of which is annexed hereto and made a part hereof as Exhibit A, finding, in substance, that Boeing had not failed or refused to bargain in good faith with SPEEA; that Boeing had not acted in violation of the Act in granting such unilateral increase, but that Boeing had violated the Act in discharging Pearson because (in the view of the majority of the members of the Board) the activities of Pearson in connection with the Manpower Availability Conference leading to his discharge were to be regarded as concerted, protected activities under the Act. The decision relating to the propriety of Pearson's discharge was not unanimous, three members of the Board concurring on the majority opinion and two members of the Board dissenting. The Board's Order directs that Boeing reinstate Pearson with back pay, post the notice to which reference is made in the Order, and take other affirmative action.

4. The points upon which Boeing intends to rely for the relief herein requested are as follows:

(a) The conclusions of law upon which said Order is based, insofar as said Order relates to the

discharge of Pearson and the protected or unprotected nature of his activities in connection with the Manpower Availability Conference, are not supported by the findings of fact made by the Board and are erroneous, contrary to law and unsupported by the record of said proceeding considered as a whole.

(b) The Order is arbitrary and capricious and constitutes an abuse of discretion and exceeds the powers vested in the Board.

(c) The Order requires affirmative action by Boeing not warranted by the findings of fact and conclusions of law of the Board or by the evidence of record.

(d) Specifically, the Board's Decision and Order, insofar as it finds Boeing guilty of a violation of the Act in connection with the discharge of Pearson, is invalid and erroneous by reason of the following:

(1) In failing to find merit in Boeing's exceptions numbered 1 to 9, inclusive, to the Intermediate Report and Recommended Order.

(2) In failing to find the union-sponsored Manpower Availability Conference, to which reference is made in the attached Decision and Order, to be an unprotected activity under the Act.

(3) In refusing to rule that the evidence adduced with respect to the "Gentlemen's Agreement", to which reference is made in the attached Decision and Order, was inadmissible hearsay and beyond the scope of the issues in this case.

(4) In refusing to find that the activities of

SPEEA and its members in connection with the Manpower Availability Conference—particularly at a time when the parties were engaged in collective bargaining negotiations—constituted an unfair labor practice and a refusal to bargain in good faith on the part of SPEEA in violation of Section 8(b)(3) of the Act, and therefore could not, at the same time, have been protected activities under the Act.

(5) In finding that the Manpower Availability Conference did not contravene the policies of the Act.

(6) In finding that the Manpower Availability Conference constituted merely "a conditional threat that some of the respondent's employees would resign if the respondent did not meet the union's stated bargaining demands."

(7) In finding that the Manpower Availability Conference "was directly related to matters of collective bargaining in issue between the respondent and the union" rather than finding that it was a device primarily created to bring about a permanent exodus of Boeing's employees to other employers.

(8) In refusing to find that the conduct of SPEEA and of Pearson in connection with the Manpower Availability Conference was indefensible with respect to Boeing.

(9) In finding that Boeing discriminated against Pearson to discourage union membership and activity.

(10) In finding that Boeing interfered with, restrained or coerced its employees in the exercise of

rights guaranteed by Section 7 of the Act in violation of Section 8(a)(1) and in finding that Boeing was in violation of Section 8(a)(3) of the Act.

(11) In finding that the remedy of back pay will effectuate rather than contravene the policies of the Act.

(12) In finding that Pearson's discharge was improper, particularly after finding that Boeing had discharged its duty to bargain in good faith concerning such discharge.

(13) In directing that Boeing post the notice, a copy of which is attached to the Board's Decision and Order as Appendix A.

Wherefore, the petitioner prays:

1. That the respondent, National Labor Relations Board, be required in conformity with law to certify to this Court a transcript of the entire record in the proceeding wherein said Decision and Order was entered.

2. That said proceedings, findings, conclusions and Decision and Order be reviewed by this Court and that said Decision and Order be set aside, vacated and annulled insofar as such Decision and Order finds or concludes that Boeing has been or now is in violation of the Act, or directs any remedy based on any such finding or conclusion; and that the Board be ordered to dismiss in its entirety the Complaint against petitioner.

3. That this Court exercise its jurisdiction and grant to petitioner such other and further relief in the premises as the rights and equities in the cause

may require and to the Court may seem just and proper.

/s/ DeFOREST PERKINS,
/s/ WILLIAM M. HOLMAN

Of Counsel:
HOLMAN, MICKELWAIT, MARION, BLACK & PERKINS

[Printer's Note: The attached Decision and Order is a duplicate of Decision and Order set out in full at pages 130-150 of this printed record.]

[Endorsed]: Filed Oct. 7, 1954. Paul P. O'Brien, Clerk.

[Title of U. S. Court of Appeals and Cause.]

ANSWER OF THE NATIONAL LABOR RELATIONS BOARD TO PETITION TO REVIEW AND SET ASIDE ITS ORDER AND REQUEST FOR ENFORCEMENT OF SAID ORDER

To the Honorable, the Judges of the United States Court of Appeals for the Ninth Circuit:

The National Labor Relations Board, pursuant to the National Labor Relations Act (61 Stat. 136, 29 U.S.C., Sec. 151, et seq.), herein called the Act, files this answer to the petition to review and set aside an order issued by the Board against Boeing Airplane Company, petitioner herein, and the Board's request for enforcement of said order.

1. The Board admits the allegations contained in paragraphs numbered 1 and 2 of the petition to review.

2. With respect to the allegations contained in paragraph numbered 3 of the petition to review, the Board prays reference to the certified transcript of the record, filed herewith, of the proceedings heretofore had herein, for a full and exact statement of the pleadings and evidence, of the findings of fact, conclusions of law, and order of the Board, and of all other proceedings had in this matter.

3. The Board denies each and every allegation of error contained in paragraph numbered 4 of the petition to review.

4. Further answering, the Board avers that the proceedings had before it, and the findings of fact, conclusions of law, and order of the Board, were and are in all respects valid and proper under the Act, and pursuant to Section 10 (e) of the Act, respectfully requests this Honorable Court for enforcement of said order issued against petitioner on September 30, 1954, in the proceedings designated in the records of the Board as Case No. 19-CA-806, entitled "In the Matter of Boeing Airplane Company, Seattle Division and Seattle Professional Engineering Employees Association."

5. Pursuant to Section 10 (e) and (f) of the Act, the Board has certified and filed with the Court a transcript of the entire record in the proceedings before it.

Wherefore, the Board prays that the Court enter

a decree denying the petition to review and enforcing in whole said order of the Board.

Dated at Washington, D. C., this 9th day of November, 1954.

/s/ MARCEL MALLET-PREVOST,
Assistant General Counsel, National Labor Relations Board

[Endorsed]: Filed November 12, 1954. Paul P. O'Brien, Clerk.

[Title of U. S. Court of Appeals and Cause.]

STATEMENT OF POINTS UPON WHICH PETITIONER INTENDS TO RELY ON APPEAL

Boeing Airplane Company, Petitioner in the above entitled proceeding, hereinafter referred to as "Boeing", states in accordance with subdivision 6 of Rule 17 of the Rules of this Court, that on the appeal of the above entitled cause it intends to rely upon the points enumerated below. The National Labor Relations Board is hereinafter referred to as the "Board" and its Decision and Order issued on September 30, 1954, a copy of which is annexed as Exhibit A to the Petition for Review of and to Set Aside, in Part, an Order of the National Labor Relations Board, is hereinafter referred to as the "Order".

1. The conclusions of law upon which said Order is based, insofar as said Order relates to the dis-

charge of Pearson and the protected or unprotected nature of his activities in connection with the Manpower Availability Conference, are not supported by the findings of fact made by the Board and are erroneous, contrary to law and unsupported by the record of said proceeding considered as a whole.

2. The Order is arbitrary and capricious and constitutes an abuse of discretion and exceeds the powers vested in the Board.

3. The Order requires affirmative action by Boeing not warranted by the findings of fact and conclusions of law of the Board or by the evidence of record.

4. Specifically, the Order, insofar as it finds Boeing guilty of a violation of the National Labor Relations Act, as amended, in connection with the discharge of Pearson, is invalid and erroneous by reason of the followin:

(a) In failing to find merit in Boeing's exceptions numbered 1 to 9, inclusive, to the Intermediate Report and Recommended Order.

(b) In failing to find the union-sponsored Manpower Availability Conference, to which reference is made in the Order, to be an unprotected activity under the Act.

(c) In refusing to rule that the evidence adduced with respect to the "Gentlemen's Agreement", to which reference is made in the Order, was inadmissible hearsay and beyond the scope of the issues in this case.

(d) In refusing to find that the activities of SPEEA and its members in connection with the

Manpower Availability Conference—particularly at a time when the parties were engaged in collective bargaining negotiations—constituted an unfair labor practice and a refusal to bargain in good faith on the part of SPEEA in violation of Section 8(b)(3) of the Act, and therefore could not, at the same time, have been protected activities under the Act.

(e) In finding that the Manpower Availability Conference did not contravene the policies of the Act.

(f) In finding that the Manpower Availability Conference constituted merely "a conditional threat that some of the respondent's employees would resign if the respondent did not meet the union's stated bargaining demands."

(g) In finding that the Manpower Availability Conference "was directly related to matters of collective bargaining in issue between the respondent and the union" rather than finding that it was a device primarily created to bring about a permanent exodus of Boeing's employees to other employers.

(h) In refusing to find that the conduct of SPEEA and of Pearson in connection with the Manpower Availability Conference was indefensible with respect to Boeing.

(i) In finding that Boeing discriminated against Pearson to discourage union membership and activity.

(j) In finding that Boeing interfered with, restrained or coerced its employees in the exercise of rights guaranteed by Section 7 of the Act in viola-

tion of Section 8(a)(1) and in finding that Boeing was in violation of Section 8(a)(3) of the Act.

(k) In finding that the remedy of back pay will effectuate rather than contravene the policies of the Act.

(l) In finding that Pearson's discharge was improper, particularly after finding that Boeing had discharged its duty to bargain in good faith concerning such discharge.

(m) In directing that Boeing post the notice, a copy of which is attached to the Order as Appendix A.

Dated at Seattle, Washington, this 17th day of November, 1954.

/s/ DeFOREST PERKINS,
/s/ WILLIAM M. HOLMAN,
/s/ ROBERT S. MUCKLESTONE,
Attorneys for Petitioner, Boeing Airplane Company

Of Counsel:
HOLMAN, MICKELWAIT, MARION, BLACK & PERKINS

[Endorsed]: Filed November 18, 1954. Paul P. O'Brien, Clerk.

[Title of U. S. Court of Appeals and Cause.]

STATEMENT OF POINT RELIED UPON BY THE NATIONAL LABOR RELATIONS BOARD

The Board properly found that the activities of employee Pearson in connection with the Manpower Availability Conference were union or concerted activities protected by Section 7 of the National Labor Relations Act, and that by discharging him therefor the Company violated Section 8(a) (1) and (3).

Dated at Washington, D. C., this 24th day of November, 1954.

/s/ MARCEL MALLET-PREVOST,
Assistant General Counsel, National Labor Relations Board

[Endorsed]: Filed November 29, 1954. Paul P. O'Brien, Clerk.

Before the National Labor Relations Board
Nineteenth Region

Case No. 19-CA-806

In the Matter of BOEING AIRPLANE COMPANY, SEATTLE DIVISION, and SEATTLE PROFESSIONAL ENGINEERING EMPLOYEES ASSOCIATION

TRANSCRIPT OF PROCEEDINGS

Room 407, United States Courthouse Building, Seattle, Washington, Tuesday, June 23, 1953.

Pursuant to notice, the above-entitled matter came on for hearing at 10 o'clock, a.m.

Before: Maurice M. Miller, Esq., Trial Examiner.

Appearances: Paul E. Weil, Esq., and Robert Tillman, Esq., Seattle, Washington, appearing on behalf of the General Counsel. Jack R. Cluck, Esq., 525 Central Building, Seattle, Washington, appearing on behalf of Seattle Professional Engineering Employees Association. DeForest Perkins, Esq., and William M. Holman, Esq., Hoge Building, Seattle 4, Washington, appearing on behalf of Boeing Airplane Company, Respondent. [1*]

Trial Examiner Miller: The hearing will be in order.

This is a formal hearing before the National Labor Relations Board in the matter of Boeing Airplane Company and Seattle Professional Engi-

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* Page numbers appearing at top of page of original Reporter's Transcript of Record.

neering Employees Association in Case No. 19-CA-806.

The Trial Examiner for the National Labor Relations Board is Maurice M. Miller.

Will counsel and other representatives of the parties please state their appearances for the record?

Mr. Weil: Paul Weil, Seattle, Washington, appearing for General Counsel, and Robert Tillman, Seattle, Washington, appearing for the General Counsel.

Mr. Cluck: Jack R. Cluck, appearing for Seattle Professional Engineering Employees Association.

Mr. Perkins: DeForest Perkins and William M. Holman of the firm of Holman, Mickelwait, Marion, Black and Perkins, representing the respondent, Boeing Airplane Company, Seattle Division.

Trial Examiner Miller: Since this is a formal hearing, we shall maintain the dignity and decorum which usually accompany judicial proceedings. Counsel should refrain from cross-table arguments, irrelevant comment, or discussion which does not promote the progress of the hearing. If you have a specific point which you wish to make, I ask that you address your remarks to the Trial Examiner or questions to the witness.

It is requested also that all persons present refrain from [3] smoking in this room while the hearing is in progress.

Statements as to the reasons for motions or objections should be specific and concise, but the Trial Examiner in his discretion will hear extended argu-

ment if requested. It is preferred that all such statements be made upon the record. Discussion off the record should be confined to procedural matters. Such discussion will not be included in the official transcript unless an appropriate order is issued by the Trial Examiner upon the request of a party or upon his own motion. All requests to go off the record should be directed to the Trial Examiner and not the official reporter. If you wish to discuss stipulations or matter pertaining to the issues, it is suggested that you ask for a recess rather than request discussion off the record.

During the course of the hearing the Trial Examiner may ask questions of the various witnesses. Representatives of the General Counsel and the other parties are free to object to any questions the Trial Examiner may ask, in the same manner and for the same reasons that you would object to similar questions on the part of opposing counsel.

The Trial Examiner will allow an automatic exception to all adverse rulings, and upon appropriate order an objection and exception will be permitted to stand to an entire line of questions.

An original and four copies of all pleadings and written [4] motions submitted during the hearing should be filed with the Trial Examiner. All exhibits offered in evidence should be in duplicate. If a copy of any exhibit is not available at the time the original is received, it will be the responsibility of the party who offered the exhibit to submit a copy before the close of the hearing. If such a copy is not submitted, any ruling receiving the exhibit

may be rescinded and the exhibit rejected, unless an order has been entered waiving this requirement for good reason shown, in the specific instance at issue.

The official reporter makes the only official transcript of these proceedings and all citations in briefs or arguments based upon the record, addressed to the Trial Examiner or the Board, must cite the official transcript in all references to the record. The Board will not certify any transcript other than the official transcript for use in court litigation. Proposed corrections of the transcript should be submitted to the Trial Examiner for his approval after the hearing, by stipulation or motion, within the time set hereafter for the submission of briefs. The parties will note that the official reporter is instructed to record all statements made while the hearing is in session, except when discussion off the record is ordered.

The Board has established a Branch Office of its Division of Trial Examiners at San Francisco, to which the present Trial Examiner is attached. The official reporter is advised, therefore, that the original transcript in this case and all exhibits [5] should be delivered to the Division's San Francisco Branch Office, Room 206, U. S. Appraisers Building, 630 Sansome Street, San Francisco, California. Briefs and motions or other communications, addressed to the Trial Examiner after the hearing, also, should be sent to him at the San Francisco Branch Office, in care of the Associate Chief Trial Examiner there. Motions, if submitted,

should be submitted in an original and four copies.

The Trial Examiner believes that oral argument, under most circumstances, is beneficial to his understanding of the contentions made and the factual issues involved. At the close of the hearing, therefore, the parties may be requested to argue orally. The Trial Examiner will feel free to participate in the discussion and to ask questions about the contentions of counsel or other representatives as to the issues, the facts, and the legal principles involved. The oral argument will be included in the official transcript. Any party shall be entitled, upon request made before the close of the hearing, to submit a brief or proposed findings and conclusions, or both, to the Trial Examiner. An original and four copies of such briefs or proposed findings and conclusions should be submitted early enough to make possible their receipt within twenty days after the close of the hearing or any earlier date set by the Trial Examiner, unless there are unusual circumstances which require a departure from this rule.

Meritorius requests for an extension of time to file the [6] briefs or proposed findings and conclusions should be addressed to the Associate Chief Trial Examiner at San Francisco. They should be submitted sufficiently to permit their receipt at least three days in advance of the date previously announced as the final date for the receipt of the briefs and other documents; if not, they will be considered untimely and will uniformly be denied. I make this announcement with respect to oral

argument, and the submission of briefs or proposed findings and conclusions, in order that the parties may schedule their activities accordingly.

Are you ready to proceed, Mr. Weil?

Mr. Weil: I am ready.

Trial Examiner Miller: Very well.

Mr. Weil: I would like the reporter to mark the formal pleadings as General Counsel's No. 1 for identification, please.

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 1 for identification.)

Mr. Weil: I would like to offer in evidence the formal papers in this proceeding as General Counsel's No. 1, consisting of the following papers:

No. 1-A, the charge against the employer signed by M. W. McCusker, filed on 4/20/53.

1-B the affidavit of service of the charge against the employer, mailed on 4/20/53, together with the return registered receipt. [7]

1-C, the amended charge against the employer, fiiled on May 19, 1953, signed by Mr. M. W. McCusker.

1-D, the affidavit of service of the amended charge against the employer dated 5/19/53, together with registered return receipt.

1-E, the notice of hearing in this case dated the 3rd day of June 1953 and signed by Thomas P. Graham, Jr., regional director.

1-F, the complaint in this proceeding, undated except for the date of the blank day of June 1953 and signed by Thomas P. Graham, Jr.

1-G, the affidavit of service of complaint, notice of hearing, and amended charge——

Mr. Perkins (interrupting): Does the General Counsel care to indicate a date at this time?

Mr. Weil: The date is June 3, 1953. The date was left out by error.

Mr. Perkins: Is it considered appropriate to insert that date?

Mr. Weil: I will move that as soon as I——

Mr. Perkins (interrupting): Excuse me.

Mr. Weil: 1-G, the affidavit of service, complaint, notice of hearing, dated June 3, 1953, together with registered return receipts. 1-H, the answer of respondent, Boeing Airplane Company, in the proceedings, dated the 11th day of June 1953, signed by Mr. Logan. [8]

1-I, the proof of answer of respondent, together with registered return receipts signed by DeForest Perkins, dated the 17th day of June 1953.

I would like to offer these in evidence at this time.

Mr. Perkins: May we examine the exhibit?

Mr. Weil: The other side is the duplicate file.

Trial Examiner Miller: Off the record while counsel are examining the exhibits.

(Discussion off the record.)

Trial Examiner Miller: On the record.

Mr. Perkins: Respondent has no objection to the admission of these exhibits offered.

Trial Examiner Miller: Since there is no objection, General Counsel's 1-A through 1-I, inclusive, will be received in evidence.

(The document heretofore marked General Counsel's Exhibit No. 1 for identification, was received in evidence.)

[see pages 1-19 incl.]

Mr. Weil: Mr. Examiner, at this time I would like to move to insert in the complaint in the formal pleadings the date June 3, 1953, so that the last paragraph of the complaint shall read, "On this 3rd day of June 1953".

Trial Examiner Miller: Any objection to the motion?

Mr. Perkins: I have no objection, with the understanding that the answer was served and filed in accordance with the rules.

Trial Examiner Miller: So understood, gentlemen. [9]

Mr. Weil: So understood.

Trial Examiner Miller: Very well, the motion to insert is granted.

Mr. Weil: I would like to move further that the designation of respondent on the formal papers be amended to read as follows: "Boeing Airplane Company, Seattle Division".

Trial Examiner Miller: Is there any objection?

Mr. Perkins: No objection.

Trial Examiner Miller: Since I hear none, the motion to amend the designation of the respondent company is granted.

Mr. Weil: I would like to move further that the complaint be amended in the following respects: That portion of paragraph 4 which appears on page 3 of the complaint referring to the expansion

of the unit by mutual agreement to include two additional classifications, be deleted and the word "expanded" where it appears in paragraphs five and six shall similarly be deleted.

Trial Examiner Miller: Any objection to the motion?

Mr. Perkins: No objection.

Trial Examiner Miller: Since I hear no objection, the motion to amend the complaint in the respect stated by Mr. Weil is granted.

Mr. Perkins: May we be clear on the exact language now that is taken out and the exact form of the complaint as it now stands? [10]

Mr. Weil: The exact form of the complaint as it now stands in respect to the last motion?

Mr. Perkins: Yes.

Mr. Weil: Paragraph 4, all that paragraph which appears on page 2 of the complaint, shall stand. All of that paragraph as it appears on page 3 shall be deleted.

Paragraph 5, the word "expanded", the second word in the paragraph, so that it shall read "the unit as described in paragraph 4", rather than "the expanded unit".

And paragraph 6 in the third line, it reads at present: "Respondent employees in the expanded unit", the word "expanded" deleted, and it will read, "Respondent employees in the unit described in paragraph 4".

I believe those are the only portions of the complaint that will be affected by the amendment.

Mr. Perkins: The Examiner's attention is in-

vited to the fact that we denied in respondent's answer the allegations that have now been deleted.

Is it considered necessary or desirable by the Examiner that respondent's answer be amended accordingly, or can it be understood that the answer in its present form can stand in that respect?

Trial Examiner Miller: I would be willing to have the record show that those portions of the respondent's answer which relate to the matter now stricken may be disregarded for the [11] purposes of this proceeding without the necessity of filing a formal amendment.

Mr. Perkins: That would be agreeable with respondent.

Trial Examiner Miller: Surely. The record will so show.

I can't recall now in the midst of the discussion whether I formally granted the motion. If I did not, the record will show that the motion is granted.

Mr. Weil: For the purpose of informing the parties at this time of the basis upon which this case is being presented——

Mr. Perkins (interrupting): Is that the conclusion of the formal instruments?

Trial Examiner Miller: Yes, I assume.

Mr. Weil: Yes.

Mr. Perkins: I have here a return of service on two subpoena duces tecum to Frederick D. Frajola and Edward McElroy Gardiner, respectively, which I would offer as part of formal papers on file in this case, if it is appropriate.

Trial Examiner Miller: Off the record.

(Discussion off the record.)

Trial Examiner Miller: On the record.

During the period of discussion off the record, the Trial Examiner referred to the rules and regulations of the National Labor Relations Board, series six as amended, and its statement of procedure, specifically Section 102.31 of its rules and regulations, and upon such reference I have determined that it is not [12] necessary or does not appear to be necessary to make any formal showing upon the record at this time with respect to the return of service upon subpoena duces tecum issued in the name of a party to Board litigation in the absence of any question arising with respect to the propriety of the subpoena. Since there is no indication at this time that any such question will arise, I have suggested to Mr. Perkins during the discussion off the record that formal submission of the return of service for the record is not required at this time.

Mr. Perkins: I have no further comment, except to say that there are offered and are available at any time considered appropriate.

Trial Examiner Miller: Very well.

Mr. Weil: For the purpose of informing the parties at this time of the basis upon which the case is being presented by the General Counsel and to provide the Trial Examiner with a preview of the case to supplement the formal pleadings, I shall make an opening statement before going into evidentiary matters.

On or about April 2, 1952, the charging union, which is the recognized bargaining agent of the employees of the engineering department of respondent, addressed a letter to the respondent company opening the contract for negotiations in various respects and calling upon respondent to negotiate. From that time until the present, respondent and the union have met for the purposes of bargaining on various occasions. To cover the matter [13] briefly, the bargaining took the following course:

The SPEEA, union in this case, presented various data to the company at the first meetings and proposed that the data when studied would indicate that an increase of 28 to 36 per cent would be appropriate. After several meetings the company made an offer of an increase of six per cent which was rejected by SPEEA. Various counter proposals were made to an offer by SPEEA over the course of time between April 6, I believe the first meeting, and the time when the meetings ceased. No contract has been signed.

By the middle of July, that is, 1952, it became apparent that an impasse had been reached. At this time SPEEA took the viewpoint that the company had not been bargaining in good faith and that the six point proposal of the company had been unilaterally arrived at, that the company had failed to adduce any data to support its proposal, and had failed to inject the considerable amount of data which had been adduced by SPEEA.

Shortly thereafter, the parties called in a federal mediator who attended five meetings, after which,

I believe it was five meetings, after which the parties felt that the negotiations were proceeding in an orderly fashion and the services of the mediator were dispensed with.

After about a month and a half or two months of fruitless negotiating, SPEEA set in motion a plan to hold a conference entitled Manpower Availability Conference, with a dual purpose [14] of bringing economic pressure on the company in furtherance of its negotiating and of contacting other employers of engineers to try to put the employment of engineers on a competitive basis. Before the conference had come to fruition, the company discharged the chairman, Charles Robert Pearson, who had been appointed by SPEEA to manage the conference, because of his activities in that respect. This took place on or about January 27, 1953.

About the 2nd of March, the chairman, Pearson, was offered reemployment and was reemployed by management.

On or about March 12 respondent unilaterally put into effect a wage increase for the employees in the unit.

The pleadings have narrowed the issues to a considerable degree. The basic issue that confronts the Board at this time is whether the Manpower Availability Conference was a protected, concerted activity of SPEEA. If this is the case, and it is difficult to see how it could be otherwise, the discharge of Pearson must be an unfair labor practice in violation of 8 (a) (3).

In addition, and this is the second issue, by the

discharge of Pearson respondent discouraged and obstructed SPEEA in the economic action, namely, the Manpower Availability Conference, which SPEEA had undertaken to break the impasse. The re-employment of Pearson cannot be considered to have negated this assumption since his re-employment was accomplished by respondent with [15] notice to SPEEA that respondent had not changed its position in regard to the Conference.

It is implicit in the General Counsel's case that the impasse was not arrived at by good faith bargaining but whether or not the facts sustain this implication, the unlawful action of the respondent in discharging Pearson and interfering with the Conference negates the existence of good faith impasse at this point. By this action the company showed its contempt for the effectiveness of SPEEA and its purpose to undermine and render ineffectual SPEEA's negotiating on behalf of the employees in the unit. The company's action in refusing to permit Pearson to be represented by the appropriate union officers at the conference which ended in his discharge is a further indication of the company's intent to undermine the union.

With this background of unfair labor practices, of a bad faith impasse then in existence the company instituted a unilateral wage increase. This wage increase put SPEEA in a position where it was unable to continue to bargain effectively with respondent. The General Counsel submits, therefore, that respondent is guilty of violations of Section 8 (a) (1), (3), and (5) of the Act.

Trial Examiner Miller: Inasmuch as Mr. Weil has seen fit to provide an opening statement before we actually put General Counsel to the proof, I will ask if there are any comments on Mr. Weil's opening statement. [16]

Mr. Perkins: Has the Examiner had an opportunity to go over the complaint?

Trial Examiner Miller: I had an opportunity to go over the complaint but not your answer in detail.

Mr. Perkins: I comment to this effect, that I don't understand that the complaint as responded to by the answer in this case raises all of the issues that are mentioned in the opening statement of General Counsel. I have given very careful study to the allegations of the complaint and it seems to me that the allegations that point up the issues as expressed by the complaint are stated in paragraphs eight, nine, ten and eleven. And it seems to me that the reasonable interpretation of those paragraphs is to the effect that the alleged refusal to bargain or the alleged violation of 8(a) (5) begins with the discharge of Mr. Pearson, which is contended to be a 8 (a) (1), discharge, and that also the respondent refused to bargain and is guilty allegedly of a violation of 8 (a) (5) in that connection, and that the respondent's action toward Mr. Pearson in that respect are the actions that in view of General Counsel has been expressed by the complaint here, are the actions of the respondent that colored the collective bargaining negotiations in the alleged manner of a violation of 8 (a) (5).

I did not anticipate and I don't think that re-

spondent reasonably should have anticipated that we were going to search facts completely throughout the entire course of bargaining, [17] back to July of 1952, in order to determine, or partially determine, this matter of the alleged 8 (a) (5) violation, and, if so, it seems to me that you raise issues that are entirely extraneous from the issues expressed in the complaint relative to the inherent equity or fairness, objectively speaking, of the respective positions of the parties, and so forth.

If that is the intention here, it seems to me that now is an appropriate time to discuss it and determine the course of the proceeding from here on.

Trial Examiner Miller: I think the point as to the appropriateness of the time to discuss is well taken.

Mr. Weil, do you have any statement on behalf of the General Counsel in view of Mr. Perkins' observation?

Mr. Weil: As I understand Mr. Perkins' observation, his contention is that at this time it is a late time to allege that the bargaining prior to the discharge of Mr. Pearson was bad faith bargaining.

Does that summarize it?

Mr. Perkins: I think the first point is that your intention——

Mr. Weil: No, my intention is that I shall put in a certain amount of evidence as to the bargaining that took place during that period of time, eight months, as background material to show the background of negotiation between SPEEA and the company. I do not contend that that material

shows that the company has bargained in bad faith throughout that period. [18]

On the other hand, I certainly contend that that material shows that the company has or does not show that the company has bargained in good faith.

Mr. Perkins: That is anomalous to me, Mr. Examiner.

Mr. Weil: By that I mean I have not alleged specific bad faith in that course of bargaining up to this time, to Mr. Pearson's discharge, but because I did not allege it as specific bad faith bargaining, that does not mean that I am admitting that that was good faith bargaining, or that the evidence shows that the bargaining was done in good faith. What I have alleged is at the time of the discharge of Mr. Pearson, the impasse, good faith or bad faith impasse as the fact may show, was certainly shown to be in bad faith impasse, and from that time on with a bad faith impasse in existence, the unilateral wage increase was a further act of bad faith and the 8 (a) (5) allegation will be sustained.

Trial Examiner Miller: Do I understand you correctly, Mr. Weil, to take a position on behalf of the General Counsel which, if I understand correctly, boils down to this, that the action of the company in discharging Mr. Pearson transformed an impasse with respect to which the General Counsel takes no position as to bad faith situation.

Mr. Weil: That is correct.

Mr. Perkins: I am unaware, then, as to the pertinency of the events leading up to the impasse on

the point that is [19] mentioned by the Trial Examiner as to the transformation of such impasse into an 8 (a) (5) situation.

Trial Examiner Miller: To restate the assumption implicit in my last question to which Mr. Weil, if I understand him correctly—he may correct me if I am wrong—the issue as Mr. Weil has posed it, and which we are now considering seems to boil down to this: Negotiations did occur; that the General Counsel expects to adduce evidence with respect to negotiations not for the purpose of proving any contention as to their good faith or bad faith character, but merely as part of the course of events with which we are concerned. The General Counsel's position, if I understand Mr. Weil correctly, is that the complaint is not intended to characterize their negotiations as negotiations in good faith or negotiations in bad faith, but merely as to acknowledge them as having occurred. General Counsel, if I understand Mr. Weil correctly, acknowledges that an impasse was reached, and that the actions of the company with respect to the discharge of Mr. Pearson insofar as the General Counsel is concerned, injected bad faith into the situation. That is what I understand your contention to be.

Mr. Weil: Correct.

Trial Examiner Miller: Does that formulation of the issues raise any substantial issue as far as the respondent is concerned with respect to the adequacy of the complaint or the form of the complaint? [20]

Mr. Perkins: I think for the purpose of the record, prudently I should say that I don't believe that the complaint reasonably interpreted indicates that the period previous to the impasse is important or germane to the violation or alleged violation by the respondent of 8 (a) (5) or 8 (a) (3) or 8 (a) (1) with respect to the case of Mr. Pearson.

Trial Examiner Miller: At this point I am wondering, from how the discussion is proceeding, whether we have reached a point where further explanation as to the form of the complaint is necessary or would be fruitful.

Mr. Perkins: I want to ask this question: Is the Trial Examiner's expression of the General Counsel's position here regarded as correct by representatives of the General Counsel?

Trial Examiner Miller: Mr. Weil so indicated to me.

Mr. Weil: I indicated that.

Mr. Perkins: I am not requesting an amendment of the answer as such at this time, or the amendment to the complaint at this time as such, but I would like to reserve my objection on that until such later time, depending upon the scope of the evidence that is sought to be adduced by the General Counsel, and I also, now, naturally, will register any objections that I feel are appropriate on the matter of materiality of the evidence sought to be adduced to the issues expressed by the complaint as admitted and denied by the answer.

Trial Examiner Miller: Certainly. So understood. [21]

Mr. Weil, you may proceed.

Mr. Weil: I would like to call at this time Mr. Pearson.

CHARLES ROBERT PEARSON

a witness called by and on behalf of General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Weil): Would you give us your full name and address, please, Mr. Pearson?

A. Charles Robert Pearson, 19725 Marineview Southwest, Seattle 66, Washington.

Q. What is your occupation?

A. I am an engineer presently employed as an engineering designer.

Trial Examiner Miller: With the Boeing Airplane Company?

The Witness: With Boeing Airplane Company, Seattle Division.

Q. (By Mr Weil): Are you a member of SPEEA? A. Yes.

Q. Have you been active in SPEEA affairs?

A. I have been active in SPEEA affairs.

Q. In what respect have you been active in SPEEA affairs?

A. I have served on the Action Committee. I was the chairman of the Manpower Availability Conference Committee, and presently of the Employment Committee.

Q. As a member of the Action Committee, did you treat with the Manpower Availability Conference?

(Testimony of Charles Robert Pearson.)

A. I was present and took part in a considerable portion of the discussion of the Manpower Availability Conference within the Action Committee.

Q. When did you first hear about the MAC?

A. The MAC had been mentioned as a possible instrument of pressure in discussion of negotiations of the previous contract year. This was presented to the general membership meeting on or about November 1951. No action was taken at that time since the contract with the company was imminent.

Q. Whose idea was it, if you can recall?

A. I was not a member of the committee at that time.

Q. I see. Perhaps at this time it would be a good idea for you to tell us what the Manpower Availability Conference was, what its purpose was, how it was expected to take place.

A. The Manpower Availability Conference was conceived as a meeting place wherein the engineering members of SPEEA would be brought into contact with prospective employers of engineers to assist SPEEA members in obtaining jobs elsewhere, and thereby exert economic pressure upon the Boeing Airplane Company in the furtherance of the collective bargaining associations.

Q. What is the general manner in which matters brought up in a committee like the Action Committee are presented to the membership?

A. The Action Committee explored possible means or devices as to their effectiveness or con-

(Testimony of Charles Robert Pearson.)

jectured effectiveness in collective [23] bargaining negotiations, and after discussion and development within the committee, these possible actions were proposed to the Executive Committee for their consideration before there was any contact with the members concerning those proposals.

Q. You say the Action Committee explored possible actions. What was the purpose of such actions in reference to the negotiating?

A. Well, the action explored and discussed were actions to——

Mr. Perkins (interrupting): May I just ask for clarification, negotiating with whom and what?

Mr. Weil: Negotiations between SPEEA and Boeing Airplane Company, Seattle Division.

Mr. Perkins: Thank you.

The Witness: I have lost the train of thought.

Mr. Perkins: May we hear the answer, then?

Trial Examiner Miller: Would you restate the question, please?

Q. (By Mr. Weil): You stated that you explored possible actions in the Action Committee with respect to the negotiations being conducted between SPEEA and the Boeing Airplane Company. What was the purpose of exploring possible actions, of what nature?

A. The purposes of these actions would be to exert economic pressure upon the company in the furtherance of SPEEA's position in the negotiations. [24]

Q. The MAC having been discussed by the Ac-

(Testimony of Charles Robert Pearson.)

tion Committee, was it then reported to the Executive Committee? A. Yes.

Q. When? When was it first reported to the Executive Committee?

A. I don't believe I recall.

Q. Was it during the time of these prior negotiations that you mentioned when it was first discussed in the Action Committee?

A. It was undoubtedly discussed in the Action Committee before I was a member of that committee, several months previously.

Q. When did you become a member of the Action Committee? A. In the summer of 1952.

Q. I see. After you became a member of the Action Committee, did the Action Committee report on the MAC to the Executive Committee?

A. Yes.

Q. When was that?

A. In July or August of 1952, I believe.

Q. How was such a report made?

A. It was made in a meeting at which I was not present. It was made perhaps in writing.

Q. You were not present at that meeting?

A. I was not present.

Q. Was it made as a result of determination by the Action Committee that it should be presented to the Executive Committee? A. Yes. [25]

Q. Did the Action Committee, after you became a member of it, report on the MAC to the membership of the organization?

A. Yes. The Action Committee report to the

(Testimony of Charles Robert Pearson.)

general membership meeting included the suggestion or the developed idea of Manpower Availability Conference with other proposals.

Q. When was this?

A. I believe it was in September, or, perhaps, August.

Q. This was September of what year?

A. 1952.

Q. At that time were negotiations being conducted with the employer, Boeing Airplane Company?

A. Yes, negotiations had been in progress.

Q. Who made this report on behalf of the Action Committee?

A. The report was presented to the general membership meeting by Mr. Dan Hendricks, who was at that time a member of the Action Committee.

Q. Was any action taken by the Executive Committee pursuant to the report?

Trial Examiner Miller: Are you speaking now of the period of time prior to the report to the membership or before?

Mr. Weil: I haven't determined which was which, whether the membership report was prior to the executive report or not.

Trial Examiner Miller: Very well.

A. This report was given to a membership meeting which is a small portion of the total membership, and at that meeting there [26] was a proposal made from the floor that the report be published and distributed to the entire membership,

(Testimony of Charles Robert Pearson.)

and the Executive Committee didn't do this at first, but later did take it under consideration. I am not clear on the action of the Executive Committee with regard to the report.

Q. (By Trial Examiner Miller): There is a latent question here, Mr. Pearson, that was in my mind when I made my last remark to Mr. Weil, and that is this: You have mentioned previously that the Action Committee having discussed the possibility of a Manpower Availability Conference, and having more or less formulated the idea, had communicated its thoughts on the idea to the Executive Committee of SPEEA. A. Yes, sir.

Q. You also testified to, with respect to, a report of the Action Committee, to a general membership meeting presented to Mr. Hendricks. A. Yes.

Q. The question was in my mind at the moment, do you have any personal knowledge of anything done by the Executive Committee between the time when the Action Committee first discussed this idea informally with the Executive Committee and the date of the membership meeting? A. No.

Q. If the times indicated in your previous testimony are correct, then the idea was communicated to the Executive Committee sometime [27] in July or August of '52, and the report to the membership meeting was made in August or September, the gist of your testimony, as I understand it, would then be that you have no knowledge as to whether between the first of those incidents and the second incident there was any specific action by the Ex-

(Testimony of Charles Robert Pearson.)

ecutive Committee or decision of the Executive Committee of the organization.

A. I don't know the mechanics of the Executive Committee's consideration.

Q. But your last answer before I assumed this line of examination was to the effect that after the membership committee meeting that the Executive Committee did something about the suggestion in the nature of publishing it to the membership.

A. I believe that is correct.

Trial Examiner Miller: Go ahead.

Q. (By Mr. Weil): Along that same line, now, was the Action Committee ordered to publish this report to the membership?

A. I don't recall that.

Q. Who published a report to the membership, or was one published on the MAC?

A. I am not even sure of that.

Q. You are not sure of what, who did it, or what was done?

A. I am not sure if I remember the details.

Q. Did the Action Committee continue to work on the MAC at that time?

A. The Action Committee considered and developed the proposed action, considered the mechanics of how it might be done.

Q. In this consideration what was decided should be done? In other words, tell us what the Action Committee did with the MAC plan during the time you were a member of the Action Committee.

A. The Action Committee tried to develop it

(Testimony of Charles Robert Pearson.)

into a workable instrument of pressure and studied the detail mechanics of how it should operate.

Q. What detailed mechanics did the Action Committee come up with? In other words, what did you decide as a committee?

A. I don't understand what you are getting at.

Q. Assuming that the Action Committee at some time, or assuming that the MAC at some time was ready to actually be put into motion, there must have been some planning done, some steps taken, by somebody, at some time, to take it from an idea to an accomplished fact. That is what I want you to go into.

A. There was a lot of planning, organization, and the Executive Committee appointed a Manpower Availability Conference Committee to pursue the development of those plans further.

Q. When was this?

A. I believe it was September of 1952.

Q. Were you appointed a member of that committee?

A. I was appointed the chairman of that committee.

Q. The MAC Committee? A. Yes.

Trial Examiner Miller: Was this before or after the membership [29] meeting at which Mr. Hendricks presented his report?

The Witness: It was after that.

Q. (By Mr. Weil): Was Mr. Hendricks a member of the Action Committee?

A. Yes, he was a member of the Action Com-

(Testimony of Charles Robert Pearson.)

mittee at the time the report was made, yes. He was not a member of the Manpower Availability Conference Committee.

Q. Was he a member of the Executive Committee? A. No.

Q. Just a member of the Action Committee. In the formation of the MAC for use, did the Action Committee do all of the actual preparation of documents and mailing lists, and so forth, and so on, or did the MAC Committee take care of that?

A. That was done subsequently by the MAC Committee.

Q. At the time the MAC Committee was formed and there was nothing done except the preliminary?

A. Preliminary language.

Q. The plan of action?

A. The preliminary planning was as to how such conference could be operated.

Q. Then after the MAC Committee took over the planning of this MAC, what steps were taken by them? Just go through.

A. The Mac Committee, there were several subcommittees appointed. Those committees worked. One of the committees was assigned to the compilation of the mailing list, other committees were assigned [30] for the development of forms for collecting data. A committee was assigned the problem of investigating the procedures. A committee was assigned to investigate the facilities required and how those facilities might be obtained.

(Testimony of Charles Robert Pearson.)

Q. Did all of these committees do the work to which they were assigned?

A. Substantially, yes.

Q. To whom did these committees report?

A. They reported to me.

Q. At the time the MAC Committee took over the MAC, was the Action Committee entirely supplanted in regard to MAC? Did they have any further to do with them?

A. The Manpower Availability Conference as one of the proposed actions of the Action Committee was removed from the jurisdiction of the Action Committee.

Q. What happened to the Action Committee after that? A. It is still in operation.

Q. It is still in operation with what end in view?

A. As original development of actions that might be used to further the ends of SPEEA.

Q. Inasmuch as these committees reported to you, perhaps you can answer. Tell us what evolved from the action of the mailing list committee?

A. A card file of approximately 2800 names and addresses of employers of engineers. [31]

Mr. Weil: May we go off the record for a few minutes?

Trial Examiner Miller: Off the record.

(Discussion off the record.)

Trial Examiner Miller: On the record.

We are in recess for five minutes.

(Short recess.)

(Testimony of Charles Robert Pearson.)

Trial Examiner Miller: The hearing will be in order.

Q. (By Mr. Weil): Can you tell me how this card file was gathered, where the names came from that are in the card file?

A. This compilation was accomplished by a committee of approximately a dozen men who searched in their assigned fields, the technical or trade journals in which the advertisements for engineers appear. There was no source of any standardized mailing list. This mailing list was intended to include all prospective employers of engineers and very definitely those who were advertising.

Q. The second committee you mentioned, the committee on forms for the collection of data, what sort of forms did they undertake to improvise?

A. One was a form to be submitted by each engineer attending the conference for reporting to SPEEA any offer that he may have received, what company, keyed with information on his background as to what his particular field was and his experience. There was also a form of acceptance that we intended to obtain, a form for acceptance data which we intended to obtain from those [32] men accepting jobs as a result of the Manpower Availability Conference.

Q. The only forms of data that this committee was interested in?

A. Also the preparation of an admission ticket form. There was some consideration of an agreement form wherein the engineer in presenting his

(Testimony of Charles Robert Pearson.)

admission would agree to abide by the rules of the conference.

Q. You mentioned the committee to investigate licensing procedure. Would you tell us about that committee?

A. This committee actually turned out to be a committee of one. The man contacted the city clerk and controller's office to obtain information as to whether a license was necessary, and to obtain the city ordinance pertaining to employees agency licensing, and the informal questioning regarding the necessity of obtaining a license for this type of operation.

Q. What information did he obtain?

A. His advice was that the license probably would not be necessary since the Manpower Availability Conference was to be self-liquidating or nonprofit.

Mr. Perkins: I must object to that. That is hearsay.

Trial Examiner Miller: The objection is sustained.

Mr. Perkins: May we have that remark stricken?

Trial Examiner Miller: It will be disregarded upon my sustaining the objection. [33]

Mr. Perkins: Thank you.

Q. (By Mr. Weil): What information concerning licensing procedure did the committee report to you, or the individual who comprised the Committee, I should say?

A. This sub-committee actually presented a copy

(Testimony of Charles Robert Pearson.)
of the city ordinance to me which was studied in committee at great length.

Trial Examiner Miller: When you say the city ordinance, would that be the city ordinance of the City of Seattle?

The Witness: Yes, it would.

Q. (By Mr. Weil): What deduction did you arrive at from the study of, the MAC Committee arrive at, from the study of this information?

Mr. Perkins: Objection. I believe that is calling for a conclusion, Mr. Examiner.

Mr. Tillman: It is a basis for future action by the chairman.

Trial Examiner Miller: I will permit the question.

The Witness: Would you repeat the question, please?

(Question read.)

A. It was deduced that a license was probably not necessary inasmuch as the conference was to be a non-profit operation.

Q. (By Mr. Weil): As a result of that deduction was licensing then dropped by the committee as a consideration?

Mr. Perkins: In an effort to avoid interrupting, may my objection be regarded to be a continuing objection to this type [34] of examination, as to the deductions and the conclusions of Mr. Pearson or the committee to which reference is made here as to the legal effect of the Seattle city ordinance?

I understand the Examiner has permitted the

(Testimony of Charles Robert Pearson.)

first question. I don't want to repeat the need for the ruling.

Trial Examiner Miller: I am rather reluctant to permit a continuing objection to testimony by way of conclusion, because that comes up possibly throughout the record. I will permit an objection to a continuing examination on a particular subject matter.

Mr. Perkins: The objection I have in mind is so intended.

Trial Examiner Miller: Very well, you will have a continuing objection to the examination along the line so far as laid out with respect to the effect of the ordinance and the actions of the committee taken with respect to the ordinance.

The objection is overruled.

Mr. Perkins: Thank you.

Mr. Weil: I think it would be well if you repeated the question.

(The question was read as follows:

"Q. As a result of that deduction was licensing then dropped by the committee as a consideration?")

A. Licensing was not dropped, it was decided that a license would provide insurance against a possible violation of the city ordinance before the license was obtained. [35]

Q. (By Mr. Weil): When was the license obtained?

A. The license was applied for on January 2, or about January 12, they appeared before the City

(Testimony of Charles Robert Pearson.)

Commission and the license was not granted at that time pending a report from the police department of the City of Seattle.

Q. What year? A. 1952.

Trial Examiner Miller: '52 or '53?

The Witness: '53. Excuse me.

Q. (By Mr. Weil): Was the license subsequently granted?

A. The license was subsequently granted at a time when I was out of the city.

Q. Who was the individual licensed, or was the group as a whole licensed?

A. Inasmuch as SPEEA was neither a person, partnership or a corporation, it was therefore not competent to obtain a license. The actual license was issued to Charles Robert Pearson, director of Manpower Availability Service, Seattle Professional Engineering Employees Association, Arcade Building, Seattle.

Q. Was the Executive Committee informed of the action of the Manpower Availability Conference Committee in regard to the licensing?

A. The license was obtained upon specific instructions received from the Executive Committee, and a member of the Executive Committee accompanied me in making application and in appearing [36] before the City Council.

Q. You mentioned the committee on facilities. What did that committee make up?

A. That committee's job was primarily one of investigation, since it could not be determined the

(Testimony of Charles Robert Pearson.)

full extent of facilities which would be necessary until response to the invitations were received, but the facilities committee did conduct extensive investigation as to what facilities might be available when the time and requirement arrived.

Trial Examiner Miller: Do I infer correctly, Mr. Pearson, that you are talking about physical facitilies in which persons could assemble?

The Witness: Correct, that is correct.

Q. (By Mr. Weil): Which committee, if any, drew up the invitation to the MAC?

A. They were members of the Manpower Availability Conference Committee, perhaps the chairman of the Action Committee, and others contributed thoughts in relations, suggestions, but the invitation was basically my work as a member of the committee. This form of invitation had been submitted to the Executive Committee in earlier draft and had been approved.

Q. The Committee on Forms for the collection of data, you testified worked out various forms, among which was a form, which was a form which was circulated to the membership to apprise them of the committee. Perhaps you can tell us what that form [37] included and what the purpose was.

A. The forms to which I had reference were never completed. It was mentioned as an assignment of committees to develop—for obtaining the data which was a partial objective of the conference.

(Testimony of Charles Robert Pearson.)

Q. Those forms were never submitted to the membership, is that correct?

A. No, those forms were never completed.

Q. Was any submission to the membership made of any data or questionnaires or similar papers by the MAC Committee?

A. Before the actual formation of the MAC Committee there was a questionnaire ballot form submitted to the entire membership. Further consideration of the Manpower Availability Conference as a non-strike action was based upon the results of that polling of the membership.

Mr. Weil: May we go off the record?

Trial Examiner Miller: Off the record.

(Discussion off the record.)

Trial Examiner Miller: On the record.

At this time, pursuant to an understanding previously reached, we will recess until 1:15 this afternoon at the same place.

(Whereupon, a recess was taken until 1:15 o'clock p.m.) [38]

After recess.

(Whereupon, the hearing was resumed, pursuant to the taking of the recess, at 1:15 o'clock p.m.)

Trial Examiner Miller: The hearing will be in order.

CHARLES ROBERT PEARSON

resumed the stand, having been previously sworn, and testified further as follows:

Further Direct Examination

Mr. Weil: I think it might be in order if you would read the last question and answer, please.

(The question and answer were read as follows:

"Q. Was any submission to the membership made of any data or questionnaires or similar papers by the MAC Committee?

"A. Before the actual formation of the MAC Committee there was a questionnaire ballot form submitted to the entire membership. Further consideration of the Manpower Availability Conference as a non-strike action was based upon the results of that polling of the membership.")

Mr. Weil: I will ask the reporter to mark this and identify this as General Counsel's No. 2, please.

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 2 for identification.)

Mr. Weil: I will ask the reporter to mark this as General Counsel's No. 3 for identification.

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 3 for identification.) [39]

Q. (By Mr. Weil): Showing you General Counsel's No. 2 for identification, is that the submission that you made to the membership?

(Testimony of Charles Robert Pearson.)

A. Yes, that is the submission we made to the membership, including the ballot polled.

Mr. Weil: I offer this as General Counsel's Exhibit No. 2.

Trial Examiner Miller: Is there any objection?

Mr. Perkins: Respondent objects to the admission of the exhibit marked for identification No. 2, to the extent that it refers to a so-called "gentleman's agreement".

Now, I appreciate that the Trial Examiner may not be as acquainted as the parties here with the terminology which was used in the manner that we refer to by titles that have been used frequently in the past by the parties, but in view of that it may be an appropriate time now to discuss the pertinency of that matter with the Trial Examiner and determine the position of the Trial Examiner with respect to the relevancy and materiality of any evidence in this case related to the so-called "gentleman's agreement".

To the extent that the offered exhibit does not refer to that, I have no objection.

Trial Examiner Miller: I would like, in view of your observations, Mr. Perkins, I would like to have an opportunity to study the exhibit to determine the connection in which this reference appears. [40]

I have rather hastily read the exhibit. Insofar as I can determine, Mr. Perkins, the only reference to a "gentleman's agreement", is in the second para-

(Testimony of Charles Robert Pearson.)

graph on the first page of the offered exhibit under the heading "General Plan".

Mr. Perkins: I think that is correct.

Trial Examiner Miller: Yes.

On what ground do you feel that the exhibit is objectionable because of its reference? I mean in the light of the circumstances under which the exhibit has been offered, and the state of the record up to this time, is not any reference to the so-called "gentleman's agreement" a matter which, if it needs clarification, one which can be developed in cross examination, or as a matter of the company's case in chief?

Mr. Perkins: It can be so developed, but we consider it to be entirely extraneous to the issues in this case and, therefore, that we should not be in a position where we have to go into the matter as part of cross examination. Our comment goes to its appropriateness in the case at all.

Trial Examiner Miller: Mr. Weil, any comments?

Mr. Weil: Only this, the fact that it appears there that anything that appears on that form in regard to the "gentleman's agreement" I would say is a certain indication of the validity of the appearance of the "gentleman's agreement" in this case. The "gentleman's agreement" the General Counsel contends is one of the factors which lead to the action taken in this case. It [41] is one of the factors that has been arising throughout the course of bargaining. It is one of the features to

(Testimony of Charles Robert Pearson.)

which the union has objected and about which some of the negotiating sessions have concerned themselves. I believe it is inseparable from the issue as presented.

Mr. Perkins: We contend that it isn't properly a part of the issues, but through an attempt to suggest the method of proceeding with this hearing may I suggest in that connection that there is nothing before the Trial Examiner at this time on that point. That is, there has been no definition in these proceedings as to what the General Counsel contends the so-called "gentleman's agreement" to be. And absent such a definition, and actually absent any facts in the record which would throw any light on what the contention of the General Counsel is, I withdraw my objection. But I didn't want to be in a position of being later inconsistent when evidence was introduced or offered as to what the contention of the General Counsel is with respect to the gentleman's agreement, and at that time be inconsistent and thereby not properly in a position to preserve my complete objection to this gentlemen's agreement as a factor in the case, or as an issue, on the grounds of its relevancy and its materiality.

Trial Examiner Miller: Very well, I think I understand your problem.

At this time I will overrule the partial objection to [42] General Counsel's 2 and order that it be received in evidence as offered. However, my action in doing so preserves to the respondent company

(Testimony of Charles Robert Pearson.)

the full benefit of its position in that matter, and you will be fully at liberty when the matter arises in testimonial form to pursue any contention that you wish to make with respect to the appropriateness of it in regard to the gentlemen's agreement.

The exhibit is received.

(The document heretofore marked General Counsel's Exhibit No. 2 for identification, was received in evidence.)

[See page 477.]

Q. (By Mr. Weil): Mr. Pearson, are you familiar with the result of the balloting or the result of the poll made by this ballot?

A. The results of the poll were reported to the Executive Committee and those results were reported to the membership by an area news representative, news letter.

Q. Can you tell me offhand what the results were, approximately?

A. The results were some 800 replies received overwhelmingly in favor of holding the Manpower Availability Conference.

Q. Can you tell me offhand how many, percentagewise, how many of the persons who returned this ballot pledged the first pledge, that is, to attend this conference, "I pledge to attend this conference. I desire to change companies and authorize the Executive Committee to notify Boeing of my intention not more than two weeks prior to the conference."

(Testimony of Charles Robert Pearson.)

Mr. Holman: Counsel, couldn't we stipulate as to the results of these polls? [43]

Mr. Weil: I don't know what the results are. I'm looking for the newsletter.

Trial Examiner Miller: Off the record.

(Discussion off the record.)

Trial Examiner Miller: On the record.

Discussion off the record indicates that the parties are ready to stipulate with respect to the pending question. I understand that Mr. Weil is prepared to state the stipulation.

You may proceed.

Mr. Weil: It is stipulated that in answer to pledge number 1, which I have already read into the record, the total of 872 responses, 10 individuals signed pledge number 1.

Mr. Perkins: My suggestion was that we identify the pledge descriptively by the nature of the pledge.

Mr. Weil: I just read that one in. In my question I read the entire pledge number 1 in. However, I will read it in again.

Mr. Holman: How about repeating it for stipulation?

Mr. Weil: That pledge is stated as follows: "I pledge to attend this conference. I desire to change companies and I authorize the executive committee to notify Boeing of my intention not more than two weeks prior to the conference".

Mr. Hilman: Did we get the percentages and the names, the number?

(Testimony of Charles Robert Pearson.)

Mr. Weil: Yes.

Trial Examiner Miller: He mentioned the number but no [44] percentage.

Mr. Weil: One, 15 per cent.

Mr. Holman: That is 10 names?

Mr. Weil: Ten names.

Pledge No. 2, "I pledge to attend this conference and I desire to change companies, but I desire not to disclose my intention to Boeing."

Eighty-six responses, percentage 9.86 per cent.

Pledge No. 3, "I pledge to attend this conference but do not necessarily desire to change companies at this time (those signing this pledge may not be called upon to attend if facilities and time do not permit)". Four hundred twenty, a percentage of 48.28.

Pledge No. 4, "I am willing that the conference be conducted but I will not participate." Three hundred twenty-one votes, percentage of 36.82.

And No. 5, "I desire that no conference be conducted". Thirty-four votes, percentage 3.89.

Mr. Perkins: Respondent is so willing to stipulate.

Trial Examiner Miller: Very well, on that statement of the stipulation.

Mr. Cluck?

Mr. Cluck: We stipulate.

Trial Examiner Miller: Very well, the stipulation is noted for the record.

Mr. Perkins: May it also be stipulated that

(Testimony of Charles Robert Pearson.)

those [45] percentages are percentages of the total number of ballots or pledges returned?

I think that mathematically appears to be that. It might be clarified in the record.

Trial Examiner Miller: May the stipulation be so expanded?

Mr. Weil: I am willing.

Mr. Cluck: We stipulate.

Trial Examiner Miller: Very well.

Q. (By Mr. Weil): Mr. Pearson, awhile ago we were going over the organization of the Manpower Availability Conference Committee. Was a table of organization drawn up to set forth the material that we went over, that is to say, how the committee was to function, what sub-committees were to function?

A. There was a table so drawn up for the information of the Executive Committee.

Q. Who drew that table up?

A. The committee, the MAC Committee.

Q. The committee as a whole. Showing you General Counsel's Exhibit No. 3 for identification, is that the table that you drew up?

A. Yes, it is.

Mr. Perkins: No objection.

Mr. Weil: I wish to offer General Counsel's Exhibit 3 for identification.

Trial Examiner Miller: There having been an indication [46] that there is no objection, General Counsel's 3 will be received in evidence.

(Testimony of Charles Robert Pearson.)

(The document heretofore marked General Counsel's Exhibit No. 3 for identification, was received in evidence.)

[See page 483.]

Q. (By Mr. Weil): Mr. Pearson, how did you happen to be appointed to the position you held in the MAC Committee, do you know?

A. Because I had been interested in it, in the Action Committee work.

Q. Who appointed you?

A. The Executive Committee approved the appointment by the chairman of the Action Committee.

Q. Did the Chairman of the Action Committee then designate to you that you were so appointed?

A. The Chairman of the Action Committee notified me by telephone that I was appointed to head up the MAC Committee.

Q. When did this take place, approximately?

A. It was either in August or September of 1952.

Q. Did you have any contact with the Executive Committee as Chairman of the MAC Committee, any direct contact?

A. We reported directly to the Executive Committee.

Q. How did you report to them?

A. By letter or memoranda.

Q. Were you responsible to the Executive Committee?

(Testimony of Charles Robert Pearson.)

A. We were responsible to the Executive Committee. [47]

Q. When your committee arrived at a plan of action or at a step in your plan of action, did you check out your individual steps with the committee or did you present them with merely an accomplished fact, the full plan?

A. I believe they were notified step by step, but not to ultimate detail.

Q. The General Counsel's Exhibit No. 3, which is the plan of organization of the Manpower Availability Conference, gives the duty of invitation subcommittee to assemble the list which we have discussed earlier, to send out the letter of invitation. Who determined when the letter of invitation should go out?

A. That would be the Executive Committee.

Q. The governing body of SPEEA. How did they let you know that you should send out the letters at a specific time? How were you informed?

A. I was advised by telephone that the Executive Committee had—that the Executive Committee instructed me to obtain the necessary licensing for SPEEA so that the invitations might be sent out.

Q. When was this?

A. In December 1952.

Trial Examiner Miller: Who so instructed you, do you know?

The Witness: I believe that was from Dan Hendricks, who at the time was a member of the Ex-

(Testimony of Charles Robert Pearson.)

ecutive Committee, and the Executive Committee's liaison officer from the MAC Committee. [48]

Q. (By Mr. Weil): The ballot which was sent out and which was reported, did you state when that was sent out? I don't believe you did. Would you state when it was sent out?

A. The ballot was sent out, I believe, in September of 1952.

Q. Can you tell me when the report was made on the results of the ballot?

A. The results of the ballot were reported to the membership the first portion of October 1952. That was in a publication authorized by the Executive Committee.

Q. (By Trial Examiner Miller): Mr. Pearson, General Counsel's 3 which gives the organization of the various sub-committees of your Manpower Availability Conference Committee bears a date in the lower right-hand corner of the first page of 10-17-52. I presume that is October 17, 1952. Is that an indication that the date on which this outline of committee organization was prepared?

A. It appears that I was in error as to the exact date. I would understand from the reference to the exhibit that the date on the exhibit is correct, that I was previously mistaken, if I said otherwise.

Q. Your recollection, then, now is that October 17, 1952, was the date on which this original scheme for the Manpower Availability Conference Committee was reduced to writing? A. Yes.

Q. If the Manpower Availability Conference

(Testimony of Charles Robert Pearson.)

Committee was thus [49] organized sometime in October, what is your recollection now as to the timing of the ballot?

A. The timing of the ballot was, to the best of my recollection, September.

Q. Before this document was prepared?

A. Yes, sir.

Q. By "this", I mean General Counsel's 3.

A. Right.

Trial Examiner Miller: Very well.

Q. (By Mr. Weil): Who was in charge of drawing up and sending out that ballot?

A. That ballot was, I believe, compiled by the Action Committee.

Q. Of which you were a member?

A. Of which I was a member.

Q. Will you explain the reason for the interval between the early part of October when the results of the ballot were published and January when the MAC was swung into action by your getting a license?

A. The Manpower Availability Conference Committee was instructed by the Executive Committee to proceed with plans but to take no overt action, or no publication, during the period which was—which was most of October 1952.

Q. Was a reason given you for those instructions or not?

A. The Executive Committee indicated that there were sub-committees [50] of the negotiating committees assigned to collect and analyze certain

(Testimony of Charles Robert Pearson.)

other data pertinent to the negotiations, and that no open action or open publication of other actions under consideration should be made.

Q. (By Trial Examiner Miller): How were you informed of this determination by the Executive Committee?

A. By an area representative news letter issued in the first week of October.

Trial Examiner Miller: Off the record.

(Discussion off the record.)

Trial Examiner Miller: On the record.

Q. (By Mr. Weil): Will you explain what an area representative is and the function?

A. The area representative, shall we say, system, is a loosely organized channel of information through individuals from the Executive Committee to the membership through an organized chain of individuals.

Q. Does the area representative system function both ways? Does it take, carry, news from the men to the committee as well as from the committee to the men?

A. The area representative news, the area representative system, is so designed.

Q. How are the area representatives selected, by whom?

A. They are appointed by a chain of authority, by the Executive Committee. [51]

Mr. Weil: Mr. Examiner, does that give you enough information? I plan to go into this more fully with another witness.

(Testimony of Charles Robert Pearson.)

Trial Examiner Miller: Very well. It is sufficient for the purpose now.

Mr. Weil: Thank you.

Q. (By Mr. Weil): Who publishes the area representative news letters?

A. At that time the area news, area representative central committee handled the function of actual compilation of the printing of the news letters.

Q. Who determined what goes into this news article?

A. At the time under discussion the Executive Committee appointed a liaison officer to monitor and approve all news letter material.

Q. After the period during which you were informed that you were not to go ahead with any overt action, what steps did the MAC Committee under your chairmanship take?

A. Actual detailed planning?

Q. Yes.

A. And the compilation of mailing lists, which has been referred to.

Q. When were you informed, or were you informed, that the moratorium was over, that you could go ahead with action?

A. We were not authorized to proceed until the latter part of December. [52]

Q. I believe you testified that at that time you went ahead with the licensing and took out your license, is that correct? A. Yes, sir.

Q. Did you draft, you, as a committee again,

(Testimony of Charles Robert Pearson.)

draft the invitation to the Manpower Availability Conference that was mailed out?

A. The drafting of the invitation was strictly a committee function.

Q. Did the committee submit that to the Executive Committee? A. Yes.

Q. The Executive Committee approved it as it stood, as submitted?

A. I do not recall whether the Executive Committee made any actual changes in the letter of invitation. See, actually this invitation had been prepared, the plans had been made to conduct the conference, in the early portion of December, then, and that action was delayed by the Executive Committee.

Q. Did the Executive Committee approve the form in which it finally went out? A. Yes.

Q. (By Trial Examiner Miller): Can you give us the timing of these various events, that is, the time at which the draft of the invitation was completed, the time in which it was submitted to the Executive Committee for consideration, and the time in which this approval was given?

A. I do not recall detail, but it is my memory that one draft [53] of the invitation was submitted to the Executive Committee concurrent with General Counsel's No. 3, which would be October 17th.

Q. I see. As you now recall it, did the Executive Committee indicate its approval of the invitation letter?

A. As text, not as—not with authority to do any releasing.

(Testimony of Charles Robert Pearson.)

Q. They approved the text sometime early in December, you said? Or did I understand you correctly?

A. They approved the release of it in the latter part of December 1952.

Q. At that time they told you to go ahead with the planning and organization of the conference?

A. A plate had actually been made of the invitation much earlier for release in November, and that was approved by the Executive Committee, and when it was held up the dates entered in the invitation had expired, and so it was necessary to do some cutting and revision to the plates before it could be released in January.

Q. I see. So that actually, if I understand you, the sense of your testimony correctly, then, the final draft of the invitation letter was actually ready at sometime in November and approved as to text by the Executive Committee, but the letter was not actually sent because there was what Mr. Weil has described as a moratorium, and if I understand the further sense of your testimony correctly, that moratorium, or suspension of action, was [54] lifted sometime late in December, at which time the text of the letter was redrafted to indicate revised dates?

A. Correct.

Trial Examiner Miller: Very well.

Q. (By Mr. Weil): Was the company informed of the intention of the SPEEA to run this conference?

Trial Examiner Miller: Mr. Weil, do you mean

(Testimony of Charles Robert Pearson.)

was the company officially informed, or are you asking the witness whether the company was aware of it?

Mr. Weil: Whether the company was officially informed by the committee.

A. The company was sufficiently informed by the Executive Committee by a letter in early January, to which a copy of the invitation was appended.

Mr. Weil: Will you mark this as General Counsel's No. 4 for identification, please?

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 4 for identification.)

Q. (By Mr. Weil): Showing you General Counsel's Exhibit No. 4 for identification, is that a copy of invitation that was mailed out?

A. That is the invitation.

Mr. Weil: I would like to offer General Counsel's No. 4 for identification.

Trial Examiner Miller: Is there any objection?

Mr. Perkins: No objection.

Trial Examiner Miller: Hearing no objection, General Counsel's No. 4 will be received in evidence

(The document heretofore marked for identification as General Counsel's Exhibit No. 4, was received in evidence.)

[See page 486.]

Q. (By Mr. Weil): Mr. Pearson, did you see the letter which accompanied the invitation that went to the company?

A. No, sir. That letter was sent to the company

(Testimony of Charles Robert Pearson.)

by the Executive Committee while I was out of town on company business.

Q. Did you take actual part in the mailing out of these invitations?

A. No. The actual mailing was accomplished while I was out of the city.

Q. Did you take part in inserting the invitation in their envelopes? A. No, sir.

Q. Did you take part in addressing the envelopes? A. No, sir.

Q. Were any of these jobs done under your supervision?

A. The actual accomplishment of that mailing was under the direction of Mr. Hendricks who had my power of attorney for that purpose.

Q. Why did you find it necessary for you to give him your power of attorney? [56]

A. Because I was sent out of town on company business.

Q. When did you leave town?

A. It was either January 14 or 15.

Q. Had you at that time been instructed as to the date on which the conference was finally to have been held?

A. The date as tentatively set by the Manpower Availability Conference Committee was the date given in the invitation.

Mr. Perkins: Do you care to identify in the record at this time the letters that you are asking about, that is, the——

Mr. Weil: Did you find it?

(Testimony of Charles Robert Pearson.)

Mr. Perkins: I can get it for you right now.

Mr. Weil: I can put it in when Mr. Gardiner is on the stand.

Mr. Perkins: Is this the letter to which you have reference?

Mr. Weil: Yes.

Mr. Perkins: It is undated, but do you intend to mark that as a separate exhibit?

Mr. Weil: Yes.

Mr. Perkins: May we have it so marked so that I can refer to it?

Trial Examiner Miller: Very well.

Mr. Perkins: Then it is General Counsel's No. 5.

Mr. Weil: Yes.

Mr. Perkins: The way the record shows is that General [57] Counsel's Exhibit No. 5 for identification bears a notation on the bottom as follows: "Received 1/23/53".

Is there any contention that that date is not correct?

Mr. Weil: No.

Mr. Perkins: I make that remark because the exhibit itself is undated.

Trial Examiner Miller: Yes.

Mr. Perkins: There is no objection from the respondent as to the admission of that exhibit.

I also have photostatic copies of the exhibit if General Counsel wishes to adhere to the rule which requires two copies.

Trial Examiner Miller: Very well. Since the witness indicated that he had no personal knowledge

(Testimony of Charles Robert Pearson.)

with respect to the dispatch of the letter of notification to the company, which is the subject of General Counsel's Exhibit 5 for identification, do I take it that the exhibit is being admitted by stipulation as the letter which was sent and which was received on the date shown, on or about the date shown, in the added material at the bottom by Mr. Perkins?

Mr. Perkins: Respondent is willing to stipulate.

Mr. Weil: General Counsel is willing to stipulate.

Mr. Cluck: We so stipulate.

Trial Examiner Miller: Off the record. Off the record.

(Discussion off the record.) [58]

Trial Examiner Miller: On the record.

As a result of discussion off the record, the Trial Examiner has been supplied with conformed copies of the original letter sent, addressed to Mr. A. F. Logan by Mr. E. M. Gardiner, and on the basis of the understanding expressed on the record before our discussion off the record, I will at this time, pursuant to the stipulation, receive General Counsel's Exhibit No. 5 in evidence, the understanding being, as I view it, that the letter which is the subject of General Counsel's 5, whatever its method of dispatch and time of dispatch, was received by a representative of Boeing Airplane Company on the date and at the time shown by the notation in handwritten form at the bottom.

Mr. Perkins: And it may be further understood that a copy of General Counsel's Exhibit 4 was at that time attached to General Counsel's 5.

(Testimony of Charles Robert Pearson.)

Trial Examiner Miller: So stipulated, yes.

Mr. Weil: So stipulated.

Mr. Cluck: So stipulated.

Trial Examiner Miller: Very well, the stipulation is noted for the record and General Counsel's 5 will be received in evidence.

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 5 for identification, and was received in evidence.)

[See page 493.]

Q. (By Mr. Weil): Mr. Pearson, after you departed on company [59] business to the south, what was the next thing you had to do with the MAC?

A. I was advised that the invitation had been sent out in my absence, and on or about the 24th of January I received a telegram from the company instructing me to discontinue my plant visit and return to the Seattle plant.

Q. Did you so return? A. I did.

Q. What occurred on your return?

A. Upon my return to the plant I was instructed to work on my trip report for something over an hour, and at the end of this time I was escorted into Mr. Logan's office where I was held incommunicado from other members of the——

Q. (Interrupting): Who escorted you into Mr. Logan's office?

A. The escort was Mr. Woody McKissick of the personnel section of the engineering department.

Q. What happened after you entered Mr. Logan's office?

(Testimony of Charles Robert Pearson.)

Q. (By Trial Examiner Miller): Before we go any further, can we get the date of your return and the date on which you were taken to Mr. Logan's office? A. January 27, 1953.

Q. (By Mr. Weil): What happened after you went into Mr. Logan's office?

A. I was questioned——

Q. (Interrupting): Who was present? [60]

A. Present at the meeting with Mr. Logan was Mr. A. A. Soderquist, staff engineer, and myself.

Q. Did Mr. McKissick remain?

A. Mr. McKissick left.

Q. What took place at this meeting? What was said?

A. I was questioned concerning the signature on the Manpower Availability Conference invitation; and my request that other, that SPEEA representatives whether or not concerned be present was denied; upon at least two occasions my request to communicate with them by telephone was denied.

Q. (By Trial Examiner Miller): Did you name any specific persons that you wanted present?

A. I specifically named Mr. E. M. Gardiner, the Chairman of SPEEA, and Mr. Dan Hendricks, member of the SPEEA Executive Committee and the liaison officer for Manpower Availability Conference Committee.

Q. Did you specifically name any persons that you wanted to communicate with by telephone?

A. I believe the answer is no.

(Testimony of Charles Robert Pearson.)

Q. (By Mr. Weil): Do you recall anything further that took place at this meeting?

A. During the first part of the meeting I personally kept complete notes of everything that was said by myself, and as much of what was said by Mr. Logan as it was possible for me to reduce to writing, and to the best of my knowledge, Mr. Soderquist [61] contributed only minor correction to the whole proceeding in Mr. Logan's discourse that was taken down by the secretary.

Q. Do you have those notes?

A. Yes, I have the original of those notes.

Q. Where are they?

Trial Examiner Miller: The witness indicates a point in the hearing room.

The Witness: In my briefcase.

Mr. Perkins: I have a typewritten copy of what I regard as an original of those notes and I will stipulate that they may go in without objection as far as respondent is concerned.

Trial Examiner Miller: Off the record.

(Discussion off the record.)

Trial Examiner Miller: On the record.

Let the record show that during the period of discussion off the record the Trial Examiner explored with the parties the possibility of reaching an agreed understanding as to what transpired at the meeting to which the witness has been referring by reference to an agreed transcript of the conversation that then took place. The discussion off the record has indicated to me that the notes which

(Testimony of Charles Robert Pearson.)

Mr. Pearson may have and the notes which are in the company's possession may relate to different portions of the conference, and with the thought in mind that the discussion in evidence of both sets of notes will, in all probability, not involve us in conflict, but that the two notes may together provide a more accurate picture of what occurred, I am permitting the General Counsel to proceed at this time along the line indicated previously.

You may go ahead, Mr. Weil.

Mr. Weil: The notes that Mr. Pearson took I wish to use, in other words, only up to the point when the stenographer came in. From that time we are in agreement.

Trial Examiner Miller: Very well.

Off the record.

(Discussion off the record.)

Trial Examiner Miller: On the record.

We will have a 5-minute recess.

(Short recess.)

Trial Examiner Miller: The hearing will be in order.

Mr. Weil: Did you find from your perusal if there is anything to object to?

Mr. Perkins: May I ask some preliminary questions? Has this been marked for identification?

Mr. Weil: I will propose that it be marked for identification, but I don't propose to offer it.

Trial Examiner Miller: I am not quite sure I understand you. You propose to mark it for identification but not to offer it?

(Testimony of Charles Robert Pearson.)

Mr. Weil: I don't.

Trial Examiner Miller: I gather you merely wish to use it [63] for purposes of examination of the witness?

Mr. Weil: That is correct.

Q. (By Mr. Perkins): Referring to the booklet that you have produced here which is a writing notebook, Mr. Pearson, is that your handwriting in that book? A. Yes, sir.

Q. You had that book with you when you went to Mr. Logan's office on the occasion that you mentioned? A. That is right.

Q. And you took it with you for the purpose of making notes of the conversation that you had with him at that time? A. That is correct.

Q. And you studied these notes afterward?

A. Yes.

Q. And formed an opinion as to whether they reflect accurately the conversation that took place at this time?

A. The accuracy of those notes is limited only by my ability to write fast enough to keep up with the conversation.

Mr. Perkins: If counsel wishes to have that marked as an exhibit, respondent has no objection to its going into evidence.

Trial Examiner Miller: Off the record.

(Discussion off the record.)

Trial Examiner Miller: On the record.

Mr. Weil: Would you mark this as General Counsel's No. 6?

(Testimony of Charles Robert Pearson.)

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 6 for identification.) [64]

Trial Examiner Miller: As a result of discussion off the record, it is my understanding that the parties have reached an agreement as to the method by which our record may be made to reflect Mr. Pearson's notes with respect to the conversation which occurred in Mr. Logan's office. It is my understanding that the parties have agreed to the submission in evidence of the actual notebook in which Mr. Pearson made his notes to be marked for identification at this time as General Counsel's 6.

Mr. Perkins: Off the record.

Trial Examiner Miller: Off the record.

(Discussion off the record.)

Trial Examiner Miller: On the record.

Mr. Weil: Will you mark this as General Counsel's Exhibit No. 7?

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 7 for identification.)

Trial Examiner Miller: Let the record show that during the period of discussion off the record Mr. Perkins provided Mr. Weil with a copy of the transcript made of the stenographic notes taken during the latter portion of the conference in Mr. Logan's office to which reference has already been made on our record, and that at Mr. Weil's request the reporter marked the transcript so furnished as General Counsel's 7 for identification. [65]

(Testimony of Charles Robert Pearson.)

Mr. Perkins: To which respondent has no objection.

Trial Examiner Miller: There has been no formal offer yet.

Mr. Weil: I am about to offer it.

Trial Examiner Miller: Actually, we don't have any formal offer. I have been assuming you will all along and I think our discussion on the record will show as we have been going on and off that 6 would be offered, but we don't have a formal offer of 6 and we don't have a statement on the record that 6 will be withdrawn for the purpose of making conformed copies.

Would you state your understanding with respect to General Counsel's 6 and 7?

Mr. Weil: It is the understanding of counsel that General Counsel's Exhibits 6 and 7 will be offered, will be stipulated as the transcripts of the conversation testified to by the witness. General Counsel's 6 it is stipulated will be withdrawn and copies substituted.

Trial Examiner Miller: So understood, yes.

Mr. Perkins: No. I would prefer to stipulate that General Counsel's Exhibit 6 for identification upon offer will be introduced in evidence without any objection on the part of respondent, and that General Counsel's Exhibit 7 is stipulated to be an accurate recount of the conversation that transpired in the latter part of the Logan-Pearson conference on January 27, 1953.

(Testimony of Charles Robert Pearson.)

Trial Examiner Miller: And that it may be so received. [66]

Mr. Perkins: And that it may be so received.

Trial Examiner Miller: I think that is possibly a more accurate statement.

Mr. Tillman: Further, that if the witness were to testify concerning his notes, he would testify in confirmance thereto.

Mr. Perkins: Yes, I will so stipulate.

Trial Examiner Miller: So understood, gentlemen?

Mr. Cluck: So understood.

Trial Examiner Miller: Very well, the stipulation is noted for the record.

Pursuant to the stipulation, General Counsel's Exhibits 6 and 7 for identification will be received in evidence, and permission given for the physical withdrawal of General Counsel's 6 and the substitution of conformed copies.

(The documents heretofore marked for identification as General Counsel's Exhibits Nos. 6 and 7, were received in evidence.)

[See pages 494-499.]

Mr. Weil: One more word in that connection. I would like to point out on the record that General Counsel's 6 includes only the first three pages of a bound notebook.

Trial Examiner Miller: Very well.

Q. (By Mr. Weil): After the conversation which took place then with Mr. Logan, were you

(Testimony of Charles Robert Pearson.)

dismissed in accordance with the words in that conversation?

A. Mr. Logan's concluding statement was that I was dismissed as of that time. [67]

Q. Were you subsequently given a dismissal notice and actually taken off the payroll?

A. Yes.

Q. By "dismissed", I mean dismissed from the employ of the company. Does your answer still stand? A. Yes, sir.

Mr. Perkins: The answer admits discharge.

Mr. Weil: Would you mark this as General Counsel's Exhibit 8, please, for identification?

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 8 for identification.)

Q. (By Mr. Weil): When you were dismissed from the employ of the company were you given a dismissal notice? A. Yes, sir.

Q. Handing you General Counsel's 8 for identification, is that a photostat of the original dismissal notice that you were given?

A. Yes, sir, that is the photostat of the dismissal.

Mr. Weil: Will counsel stipulate that this photostat is a true copy of the original?

Mr. Perkins: Yes.

Mr. Weil: I would like to offer General Counsel's Exhibit 8 for identification.

Mr. Perkins: No objection.

(Testimony of Charles Robert Pearson.)

Trial Examiner Miller: General Counsel's Exhibit 8 will be received in evidence. [68]

(The document heretofore marked General Counsel's Exhibit No. 8 for identification, was received in evidence.)

[See page 499.]

Q. (By Mr. Weil): After you left this meeting, Mr. Pearson, what did you do?

A. At the end of the meeting I was permitted to contact Mr. Gardiner and Mr. Hendricks by telephone while Mr. Logan's secretary was transcribing her notes of the latter portion of the conversation. In those conversations arrangements were made that I would meet with the Executive Committee after leaving the premises of the company.

Q. Did you attend any conference with the Executive Committee about your discharge?

A. The same afternoon, yes, sir.

Q. Did you attend any further conferences of the Executive Committee, or meetings of the Executive Committee regarding your discharge?

A. Yes.

Q. When?

A. You mean subsequent to January 27th?

Q. Subsequent to your discharge.

Mr. Perkins: I am not quite clear. Are these company meetings that you are referring to or are these intra-union meetings? You are not talking about meetings between company and SPEEA?

Mr. Weil: I am talking about meetings within the union.

(Testimony of Charles Robert Pearson.)

The Witness: There was such a meeting on the afternoon of [69] January 27th at which I was in attendance.

Q. (By Mr. Weil): Were there any other meetings at which you were in attendance thereafter?

A. Yes.

Q. When?

A. Executive Committee meetings of the next two or three weeks.

Q. Did you attend all of the Executive Committee meetings thereafter or several such meetings? A. I believe so.

Q. You believe you attended all or do you believe you attended several?

A. Several. Excuse me.

Q. To your knowledge, did the Executive Committee take any action resulting from your discharge?

A. The Executive Committee drafted a letter to the company requesting that the matter be negotiated.

Q. Was the matter negotiated?

A. Meetings were held with the company, yes.

Q. Did you attend those meetings?

A. I attended one of those meetings which was not an official negotiating meeting, as near as I can determine, but the actual negotiations did not include—I was not present. Excuse me.

Mr. Weil: Mr. Examiner, I won't go into the matter of these meetings with this witness any

(Testimony of Charles Robert Pearson.)

further, because I shall put that on with other witnesses. [70]

Trial Examiner Miller: Very well.

Q. (By Mr. Weil): Did you subsequently receive a letter from the company reviewing your discharge or your termination?

A. Yes, sir.

Q. Can you tell me when that was received?

A. I believe it was the early part of March 1953.

Mr. Weil: Will you mark this, please, as General Counsel's Exhibit No. 9?

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 9 for identification.)

Mr. Perkins: No objection.

Q. (By Mr. Weil): Showing you General Counsel's Exhibit No. 9 for identification, is that the letter you received? A. Yes.

Mr. Weil: I would like to offer General Counsel's Exhibit No. 9 for identification.

Trial Examiner Miller: Is there any objection?

Mr. Perkins: No objection.

Trial Examiner Miller: General Counsel's Exhibit No. 9 will be received in evidence.

(The document heretofore marked General Counsel's Exhibit No. 9 for identification, was received in evidence.)

[See page 500.]

Q. (By Mr. Weil): Does the date on General

(Testimony of Charles Robert Pearson.)

Counsel's No. 9 refresh your memory about when you received it? [71] A. Yes.

Q. Did you receive that letter on or about the date that is written on that letter?

A. I believe that was within a day or so after the date of that letter, yes.

Q. Were you subsequently re-employed by the company, by the respondent?

A. Yes, on or about March 17.

Q. What did you do in the meantime in that period between your discharge and your re-employment?

A. For that period I was working for the Seattle Professional Engineering Employees Association on their office staff.

Q. Are you presently working for the respondent? A. Yes.

Q. On your reinstatement or re-employment by the company, were you reinstated completely to the position you held when you were discharged?

A. I was re-employed in the same crew, yes, sir.

Q. Were you re-employed, were you reinstated in the rights which may have occurred to you as a result of the seniority you had built up there, to your knowledge?

A. That has been rather difficult to determine, but it appears that the answer would now be yes.

Mr. Weil: That is all.

Trial Examiner Miller: Mr. Cluck? [72]

Mr. Cluck: Not at this time.

Trial Examiner Miller: Mr. Perkins?

(Testimony of Charles Robert Pearson.)

Mr. Perkins: Thank you, yes.

Cross Examination

Q. (By Mr. Holman): Mr. Pearson, when did you first go to work for Boeing?

A. September 1940.

Q. September 1940. And calling your attention to the fall of 1951, in what capacity did you work for Boeing?

A. In the fall of 1951 I was transferred, or in the late summer, to the pneumatics group, on the B-52. My position——

Q. (Interrupting) I don't think I understood the last statement.

A. My position has been that of engineering designer since, I believe, the spring of 1952.

Q. When did you first join SPEEA?

A. In the spring of 1951.

Q. Spring of 1951. How long had SPEEA been operating at that time, if you know, at the Boeing plant?

A. Since around 1945 or so. I am not sure.

Q. What offices have you held in SPEEA during the year of 1951? What offices did you hold, if any? A. None in 1951.

Q. Were you active on any committees in 1951? That is committees of SPEEA I am referring to.

A. I was active on an insurance committee for a short time but I do not recall the date.

Q. When did you first become active on the

(Testimony of Charles Robert Pearson.)

Action Committee to which reference was made in your direct examination?

A. In the summer of 1952.

Q. The summer of 1952. How long had the Action Committee been going on at that time?

A. To the best of my recollection, since the fall of 1951.

Q. Who was the head of the Action Committee in the fall of 1951?

A. I believe that would be James B. Williams.

Q. James B. Williams. Now, the Action Committee was formed, was it, to consider various types of non-strike action? A. Yes.

Q. And the Manpower Availability Conference was one of those types of actions?

A. (Witness nods.)

Trial Examiner Miller: Let the record show the witness nodded his head in the affirmative.

Q. (By Mr. Holman): You were familiar with the purpose and the activities of the Action Committee during the fall of 1951? That is, as a member of SPEEA?

A. I was present at a general membership meeting at which the Action Committee made a report.

Q. You spoke of a report that had been prepared at the end of 1951. Is that correct? A report with respect to possible [74] action that could be taken?

A. Yes. This was at the close of the negotiations, approximately near the time that the vote was taken on an earlier contract.

(Testimony of Charles Robert Pearson.)

Q. That report indicated certain types of actions short of a strike that could be taken, is that correct? A. Yes, sir.

Q. And the Manpower Availability Conference is one of those types of action?

A. Yes, sir.

Q. And other types of action were refusal to punch time clocks?

A. I do not recall whether that was in that particular report or not.

Q. Was that a form of action which was later considered by the Action Committee?

A. It was discussed in the Action Committee as a possible action.

Q. You mentioned other forms of action short of a strike, other than the Manpower Availability Conference. What forms did those suggested lines of action take other than the MAC?

Trial Examiner Miller: Are you speaking now about the fall of 1951, the earlier report to which the witness previously referred?

Mr. Holman: Yes, that is correct. [75]

Trial Examiner Miller: Very well.

A. My memory isn't good enough to remember the details of that report even to the extent of the suggestion—failure to punch time clocks. I don't recall.

Q. (By Mr. Holman): I don't expect you, Mr. Pearson, to remember all the details. I am just trying to inquire as to what other non-strike actions

(Testimony of Charles Robert Pearson.)

were contemplated as you testified in direct examination other than the MAC?

A. Are you speaking of 1951 or '52?

Q. You don't recall any, 1951?

A. I was not in the Action Committee at that time.

Q. I understand that, but do you recall any? If you don't recall, that is all I am asking.

A. Not well enough to give any——

Q. (Interrupting) How about in 1952, then?

A. There is in existence a fairly complete report of what the Action Committee reported to the general membership.

Q. When was that made up, more or less?

A. In the summer of 1952.

Q. Could it have been around August?

A. I think that that would be about right.

Q. I am holding in my hand what has been entitled "Proposal for SPEEA'S plan of action", which appears to be signed by the Action Committee. Is this the report to which you make reference? [76] A. Yes.

Q. Calling your attention to the last page on this report, in item 3 it indicates that one of the actions is to stop punching time clocks.

A. Yes.

Q. What other actions were considered besides stop punching time clocks by the Action Committee in the MAC?

A. Would you care for me to read from that report?

(Testimony of Charles Robert Pearson.)

Q. Well, the General Counsel can put the report in if he wishes. I am asking for your recollection at the moment.

Mr. Tillman: I would like to interpose an objection as to materiality to any further types of action that this Action Committee may have engaged in.

Trial Examiner Miller: What is the materiality, Mr. Holman?

Mr. Holman: The materiality of this is that the type of action which the SPEEA engaged in is similar and has been allied to the type of action which the Manpower Availability Conference is presently involved in. This goes to the question as to whether the SPEEA was bargaining in good faith, which is part of the contention in the complaint, good faith being that they were on the Boeing payroll and nevertheless were taking action against the Boeing management, such as the Manpower Availability Conference.

Mr. Perkins: It is also part of the background, Mr. Examiner, [77] against which the employer here appraised and viewed the Manpower Availability Conference.

Mr. Holman: I might also point out, Mr. Examiner, this was brought out on direct examination. The witness stated that this was one of a number of lines of attack that they had considered. I think we are entitled to show that since it has been opened up under direct examination.

Mr. Tillman: I don't consider that as opening up. I would say one of several considered.

(Testimony of Charles Robert Pearson.)

Trial Examiner Miller: If the matter has that relevancy and materiality, I will sustain the objection. I am considering whether or not it has relevancy and materiality on the two grounds indicated by counsel for the respondent company. Since there is no cross-complaint, as it were, in this proceeding against SPEEA on the grounds of refusal to bargain under Section 8 (b) (3), there is no specific issue posed in that connection except insofar as it is posed under the doctrine of the St. Petersburg Times' case.

Mr. Perkins: How does the Examiner regard our further defense in that respect?

Trial Examiner Miller: I would take the position as a matter of law that the allegation in an answer that a union had refused to bargain in violation of Section 8 (b) (3) poses no issue for the Board's determination under Section 8 (b) (3). In other words, the mere fact that the question of the union's [78] bargaining in good faith has been injected into the case does not in and of itself raise an issue requiring an affirmative order by the Board if it were to find in line with the allegation in the answer under Section 8 (b) (3) calling upon the union to bargain. If the matter is material at all, it is material as a defense independently of the provisions of Section 8 (b) (3), and as a defense independently of the provisions of 8 (b) (3) the defense is of relevance in the case only if the doctrine of the St. Petersburg Times case is involved, that doctrine being a doctrine which holds, in effect,

(Testimony of Charles Robert Pearson.)

that a company cannot be found to have engaged in unfair labor practice of refusing to bargain if the conduct of the union in the course of the negotiations was such as to create a situation in which the company's good faith could not be tested.

I confess that I have some idea in seeing a parallel between the situation in the St. Petersburg Times case and in this case. Insofar as these other suggested lines of action by SPEEA short of strike are involved, I am not satisfied that this particular line is material on that theory insofar as an examination along this particular line may serve to elicit background material which the company alleges to be relevant in determining the manner in which it appraised the situation with which it was confronted when MAC swung into action. I confess that I am not as clear in my own mind as to its materiality and for that reason I am going to overrule the objection. [79]

Mr. Cluck: If Your Honor please, I want to call attention to the wording in the defense here, that is, in the answer, in which it is stated, "For the further grounds of defense, respondent charges that SPEEA through its officers and agents, has refused to bargain collectively in good faith with respondent, in violation of Section 8 (b) (3) in the Act, to the extent that SPEEA organized, promoted and operated the Manpower Availability Conference, to which reference is made in the complaint, and conducted activities relating to such Manpower Availability Conference, the threat of economic ac-

(Testimony of Charles Robert Pearson.)

tion against and damage to respondent, in pressing the demands of SPEEA in the collective bargaining negotiations between the parties."

So, by its language the defense relates only to assertion of bad faith relating to MAC, and on that ground this other is irrelevant.

Trial Examiner Miller: The point is well taken.

I have already ruled that the grounds cited by Mr. Holman would not be grounds sufficient to convince me of the materiality in this particular issue, but with respect to the ground adduced by Mr. Perkins, I am not quite as clear, and in the interest of developing the complete record I am going to overrule the objection.

Q. (By Mr. Holman): Mr. Pearson, calling your attention to item one under "Plan of Action", what purports to be the proposal for SPEEA's plan of action referred to earlier, item one states [80] "neutralizing the hire campaign". Is that correct? A. That is correct.

Q. What was meant by that? What form of action was meant by that?

A. That would be primarily a campaign of publicity.

Q. What form of publicity?

A. All forms.

Q. Directed to what?

A. To the public, including engineers that Boeing might like to hire, students in colleges.

Q. In other words, to neutralize the effect of advertisements to graduates of colleges?

(Testimony of Charles Robert Pearson.)

A. The effect of Boeing's advertisement for additional personnel, yes, sir.

Q. In other words, to discourage the people from coming to work for Boeing?

A. To advise them of the situation as we saw it.

Q. Which was not to come to work for Boeing, is that correct? A. Sure.

Q. Calling your attention to the MAC, you have stated that you were the licensed agent and you were required to go before the City Council, is that correct?

A. I did appear before the council to obtain a license as an agent of SPEEA.

Q. What did you tell the City Council? [81]

A. I made a standard application for a business license.

Q. For what purpose?

A. An employment agency.

Q. You say you stated that as a SPEEA representative?

A. The license was applied for in the name of Charles Robert Pearson, doing business as a SPEEA officer, in short.

Q. Did you advise them as to the purpose of getting the license? In other words, what action you were going to take?

A. I don't get the significance of the question.

Q. That may come later. I am only asking you if you ever advised the City Council as to the reason why you wanted to be licensed. Let me ask you this:

(Testimony of Charles Robert Pearson.)

Did you advise them that you were going to hold this Manpower Availability Conference?

A. We just applied for an employment agency license.

Q. I am asking you whether you indicated to them that it was being used for this Manpower Availability Conference?

A. To the extent that the title named in the application was made and the license was issued implied——

Q. (Interrupting): You didn't mention Manpower Availability Conference to them, is that correct?

A. The license was applied for and granted in the name of Charles Robert Pearson, doing business as Manpower Availability Director of SPEEA.

Q. That is that title in which it was applied for, is that correct? [82] A. Yes, sir.

Q. You spoke of a Facilities Committee. That was designed to line up a meeting place and other facilities to hold this conference?

A. Yes, sir.

Q. Who was approached, that is, what facilities were approached with a view toward being used in this conference?

A. I don't have that information. That was a sub-committee assignment.

Q. Weren't they under your direction?

A. Sure.

Q. Didn't they report to you?

(Testimony of Charles Robert Pearson.)

A. In detail as to whom they contacted for space and facilities, no.

Q. Do you know whether they did or not?

A. They informally reported some possible facilities that they could get, what the range of prices would be on those facilities, yes.

Q. So they contacted facilities to get the range of prices, is that correct? A. Certainly.

Q. You don't know what facilities were contacted in that regard? A. No.

Q. You don't remember any of them? [83]

A. No.

Q. In connection with the Mailing Committee, they prepared a list of the firms to which the invitation for the Manpower Availability Conference would be sent, is that correct?

A. Except for the designation of that sub-committee.

Q. Perhaps——

A. (Interrupting) In our organization another title is indicated.

Q. The Invitation Committee?

A. Yes, sir.

Q. The firms to which this invitation was sent were located all over the country?

A. Yes, sir.

Q. All over the United States? A. Yes.

Q. And they were firms that you had reason to believe would like to employ engineers?

A. Yes, sir.

(Testimony of Charles Robert Pearson.)

Q. They were of all different types of industries? A. Yes, sir.

Q. They were requested to come to interview the engineers who were in Seattle, is that correct?

A. They were invited to attend a conference in Seattle.

Q. And to talk with engineers from SPEEA, is that correct?

Mr. Weil: I would like to object to that. The invitation [84] is in evidence. It is the best evidence.

Mr. Holman: We will withdraw it.

Trial Examiner Miller: Very well.

Q. (By Mr. Holman): Calling your attention to the Manpower Availability Conference ballot, Mr. Pearson, those were sent to the SPEEA members? A. Yes.

Q. And just to SPEEA members?

A. I believe that is correct.

Q. Approximately how many members were there in SPEEA at that time, if you remember?

A. Well, I prefer not to try to recall, the matter of recollecting a figure that——

Q. (Interrupting) What would be your best estimate? A. Roughly, 2000.

Q. Calling your attention to your meeting with Mr. Logan at the time you were terminated from the company, you and Mr. Logan were present, along with Mr. Soderquist and a secretary, is that correct?

(Testimony of Charles Robert Pearson.)

A. A secretary during the latter part of the meeting.

Q. Were you informed at any time that you could not leave the office?

A. I don't recall that I asked to leave the conference. I did ask that other members of the Executive Committee be present. I did ask for permission to contact them by telephone. The [85] telephone request is not included in the transcript of the meeting.

Q. You testified you were held incommunicado. You aren't indicating to the Examiner here, are you, that you could not leave the room any time you wanted to?

A. I think it was made pretty clear by inference, "Here is the meeting place. Sit down." I was very forcefully invited to sit down and listen.

Q. You didn't ask to leave?

A. I asked to use a telephone and I asked the other people be present.

Q. You didn't ask to leave, is that correct?

A. I do not recall, no.

Q. After the meeting was over you were permitted to use the telephone, is that correct?

A. Yes.

Q. And did use the telephone? A. Yes.

Q. About how many invitations to the Manpower Availability Conference were sent out?

A. Over 2800.

Q. About 2800? A. Yes.

Mr. Holman: That is all we have.

Trial Examiner Miller: Mr. Weil, any redirect?

Mr. Weil: I don't have any.

Trial Examiner Miller: Mr. Cluck?

Mr. Cluck: None.

Trial Examiner Miller: You may be excused.

(Witness excused.)

Trial Examiner Miller: At this time we will recess for 5 minutes.

(Short recess.)

Trial Examiner Miller: The hearing will be in order.

Let the record show that during the period of recess the counsel for respondent company indicated a desire to recall Mr. Pearson for certain additional questions.

Would you take the stand again for a moment, Mr. Pearson?

CHARLES ROBERT PEARSON

having been previously duly sworn, resumed the stand and testified further as follows:

Further Cross Examination

Q. (By Mr. Perkins): Mr. Pearson, this is probably an obvious question but I want to be sure on the record. Handing to you what has been admitted as General Counsel's No. 4, which is the letter on the SPEEA letterhead entitled "Are you in need of additional engineers", will you look at the second page and tell us what—whether that is a facsimile of your signature?

A. Yes, that is a facsimile of my signature.

(Testimony of Charles Robert Pearson.)

Q. And that signature was signed on over 2800 letters that were sent by SPEEA throughout the country? [87] A. Yes, sir.

Q. Was there any particular geographical location of the firms that were the addresses on that mailing list, or were those firms located throughout the various sections of the United States?

A. They were located throughout the United States.

Q. After your discharge by the Boeing Airplane Company, you said that you were employed during the entire time by SPEEA, is that correct?

A. On its office staff.

Q. Did you follow the activities of SPEEA very closely as to the Manpower Availability Conference after your discharge? A. Surely.

Q. And you are acquainted with the occurrences in connection with that Manpower Availability Conference? A. Such as what?

Q. Do you know what happened with respect to the Manpower Availability Conference after your discharge from the respondent company?

A. Surely.

Q. How did your information in that respect come to you? Were you actively participating in the activities of the Manpower Availability Conference?

A. I continued to be a chairman of the MAC.

Q. Did your discharge from Boeing Airplane Company in truth [88] interfere with your activities in connection with the Manpower Availability Conference in any way?

(Testimony of Charles Robert Pearson.)

A. It put me under considerable emotional strain which colored every activity.

Q. Was there any retraction of the letter that was sent out by SPEEA which is General Counsel's Exhibit No. 4, which is the letter bearing the facsimile of your signature?

A. You mean was that invitation withdrawn?

Q. Yes.

A. Individual companies who responded to this invitation were advised by letter that the conference would not be held.

Q. What was the reason for those companies being so advised, Mr. Pearson?

A. That the response was too small to make it worthwhile.

Q. What was the response to those letters?

A. The total replies received were approximately a dozen and a half.

Q. It was decided upon the receipt of that number of letters that you would not proceed further with your plans for the Manpower Availability Conference?

A. This invitation gave a deadline and after the expiration of that deadline it was obvious that the response was too small to permit continuation of these plans.

Q. What was your personal program in connection with the Manpower Availability Conference after your discharge by the [89] respondent company? What was it proposed that you do in connection with the Manpower Availability Conference

(Testimony of Charles Robert Pearson.)

after the date of your discharge? What were SPEEA's plans in that respect, and what were your plans in that respect?

A. To carry through the Manpower Availability Conference.

Q. Did you do that to the best of your ability?

A. I believe so.

Q. As to the 15 responses that you received, responses to the letter which is in evidence as General Counsel's Exhibit 4, can you tell us in a general way as to the nature of those replies, were they acceptances, were they letters in which the addresses involved declined, or what was the general nature of those responses to your letter? Can they be summarized?

A. Some of the replies expressed interest, some of the replies which were received subsequent to the deadline stated that they would like to attend, and others indicated that the distance was too great, or that their needs were not serious enough to warrant their participation.

Q. Do you attribute the results of the Manpower Availability Conference in any way to your discharge by the Boeing Airplane Company?

A. Will you please repeat that?

(Question read.)

A. I have no evidence that responding companies were advised as to that discharge.

Mr. Perkins: No further questions. [90]

Trial Examiner Miller: Mr. Weil?

Mr. Weil: I have nothing further.

(Testimony of Charles Robert Pearson.)

Trial Examiner Miller: Mr. Cluck?

Mr. Cluck: No, sir.

Trial Examiner Miller: You may be excused.

(Witness excused.)

Mr. Weil: I would like to call Mr. Gardiner at this time.

EDWARD McELROY GARDINER

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Weil): Would you give us your name and address, Mr. Gardiner?

A. Edward McElroy Gardiner, Norwood Village, Bellevue, Washington.

Q. What is your occupation, Mr. Gardiner?

A. Research engineer, Boeing Airplane Company?

Q. How long have you been employed by Boeing Airplane Company?

A. About seven years.

Q. Are you a member of SPEEA?

A. Yes.

Q. How long have you been a member?

A. My recollection is 1949.

Q. Have you ever held any office in SPEEA?

A. Yes. [91]

Q. What offices?

A. I have served on minor committees at the

(Testimony of Edward McElroy Gardiner.)

start for study purposes of questions, and I have served on the Executive Committee.

Q. When did you become a member of the Executive Committee?

A. Well, it was, I would say, between November of 1950 and January of 1951. It is right in that period. I filled in an unfinished term of another member.

Q. Can you tell us what the function of the Executive Committee is?

A. The Executive Committee has the authority and responsibility for the business of the SPEEA organization.

Q. What is the function of the Chairman of the Executive Committee?

A. The Chairman of the Executive Committee is selected by the members of the Executive Committee and serves as the chairman for the regular membership meetings, acting, and chairman for the Executive Committee and spokesman for the SPEEA organization.

Q. As such spokesman, does the Chairman of the Executive Committee speak for the organization in bargaining meetings with Boeing Airplane Company and other companies?

A. In bargaining meetings he speaks as a member of the Negotiating Committee. This committee is selected by the Executive Committee and during the last sessions has been the Executive Committee.

Q. With no additions, I take it?

A. None that I can recall.

(Testimony of Edward McElroy Gardiner.)

Q. By "last sessions", do you mean—what do you mean?

A. I am sorry. The 1952-1953 negotiation period and the 1951 negotiation period.

Q. We discussed earlier with Mr. Pearson the question of area representatives. Can you tell me how they are selected?

A. Yes. An area representative system was organized by the Executive Committee in response to a request from the membership. The top central committee heads were appointed following there—I am searching for the term here—they apply for membership, and after such application their appointment was accepted. The Central Committee then requested applications from other interested members located geographically throughout the unit. This is the bargaining unit. It was expected that the membership would choose their own area representatives after this first interim period had been completed. This was to be done by election. But in the interest of getting the whole affair started, the selection of the area representatives was accomplished by appointment.

Q. How are these committee members selected?

A. By secret ballot of the entire membership.

Q. How is that ballot conducted?

A. It is conducted annually for three of the six members of the Executive Committee. Nominations are accepted at the meeting [93] preceding the annual meeting held in March, and the election is held by secret written ballot, mail ballot in the in-

(Testimony of Edward McElroy Gardiner.)

terim. Also, if any member of the Executive Committee vacates his office for any reason, the mail ballot is held shortly afterwards and a new member is elected.

Q. What is the term of the member?

A. Two years.

Q. How is the chairman selected?

A. By election held by the Executive Committee in executive session.

Q. Are you familiar with the plan of action known as the Manpower Availability Conference?

A. Yes.

Q. Was this plan ever submitted to the Executive Committee during your term of office?

A. Yes.

Q. When was it first submitted?

A. The first submission was an informal submission made, I believe, in August of 1952. If we were referring to the submission made by the Action Committee during that last period—or do you wish to refer to the one preceding that?

Q. Was there one preceding that?

A. The first submission was made during the closing days of the negotiations on the 1951 contract in which an Action Committee was formed, headed by Gene B. Williams, in which actions [94] were proposed. The second submission of an Action Committee report was made at a meeting of area representatives in an informal manner, I believe, about a week before the August meeting, 1952.

(Testimony of Edward McElroy Gardiner.)

Q. By "August meeting", you mean that August membership meeting or——

A. (Interrupting) August general membership meeting.

Q. Is there any particular day on which general membership meetings are held?

A. It has been customary to hold them on the first Monday of each month, but that date was set back last fall to the second Monday due to difficulties in obtaining the proper meeting hall.

Q. That is, the submission, the informal submission, to the Executive Committee was made in the week prior to the first Monday in August?

A. Yes, if my memory serves on that. I have records that I can refer to, if you wish.

Q. I think that is probably close enough. Who submitted it to the Executive Committee?

A. The submission, it was made at the area representative meeting, was made by Dan Hendricks, speaking for William Bryant who was then the head of the Action Committee. This particular plan was informally discussed by area representatives and the Executive Committee in which certain dissatisfactions were discussed. [95]

Q. Would you carry on in narrative form the course that——

A. (Interrupting) Yes. Following that period no action was taken by the Executive Committee until the general membership meeting held in August, in which case the representative of the Action Committee read the proposed format—no, proposed

(Testimony of Edward McElroy Gardiner.)

Action Committee report for general membership acceptance.

Q. (By Trial Examiner Miller): Who was it that actually read it?

A. I can't recall, Mr. Examiner. I am not sure whether it was Mr. Hendricks or Mr. Bryant.

Trial Examiner Miller: Very well, proceed.

A. (Continuing) I could obtain that from the record.

The membership then expressed their approval of the Action Committee report and directed the Executive Committee to publish the report to the membership.

Mr. Perkins: Just a minute. May I raise a point there?

He said that the membership accepted or approved. In a sense there are several objections that could be made as to the best evidence, and so forth, but I would prefer not to object if we can have testimony at this point as to the number present and the number of votes.

The Witness: This is a matter of record. Would you like to declare a recess?

Trial Examiner Miller: We will recess for a sufficient period of time to permit consultation of the records. [96]

(Short recess.)

Trial Examiner Miller: The hearing will be in order.

The Witness: There were 182 members present

(Testimony of Edward McElroy Gardiner.)

and the minutes indicate only that a majority accepted the recommendations.

Q. (By Trial Examiner Miller): By formal vote?

A. Yes. This is all done by a standard vote, not a secret ballot.

Q. (By Mr. Holman): What date was that again? A. August 4, 1952.

Trial Examiner Miller: Continue, Mr. Weil.

Q. (By Mr. Weil): What was the purpose in the vote of the membership directing that the plan be published and submitted to the membership?

A. The reason for that, if I may explain the answer, is due to the fact that SPEEA is a democratic organization, and as such is made up of quite a few different types of individuals representing different backgrounds. As a result, the Executive Committee has been continually dealing with those who wish immediate, and you might call it pressure action, to be taken against the company in pursuance of a contract, and those who believe that the whole affair of negotiations could be more properly carried out by continued negotiation on a rational basis. As a result of that, the views that were expressed by the membership that it was wise to publish data concerning a possible plan of action which could be carried out by the membership at a later date should rational [97] bargaining fail, and should such pressure actions be necessary. In other words, the membership were rather unacquainted with what could be done and had requested that

(Testimony of Edward McElroy Gardiner.)

the Action Committee be organized, and that its contents distributed, its report distributed, in order that they could understand what it might be possible for them to do.

Q. Did the Executive Committee then cause the report to be published and distributed to the membership? A. Yes, sir.

Q. When did that take place?

A. I believe that took place the following week. It was in that order of time scale.

Q. Did the report that was published and sent out provide for a balloting of the members, how they felt about it, or was it simply an information release to them?

A. I don't recall whether the ballot and the report were concurrent, or whether there was a time lapse between the two. I would have to check the record again in order to ascertain that.

Q. Is that the ballot which we have in evidence as General Counsel's Exhibit No. 2?

A. That is right.

Q. (By Trial Examiner Miller): In other words, the ballot which is in evidence as General Counsel's No. 2 is one which may have gone out with the published report or may have gone out a little bit later?

A. That is right. I could check from the records on that.

Q. (By Mr. Weil): I believe General Counsel's Exhibit No. 2—I will show you that exhibit. Is that the report to which you are referring?

A. Yes.